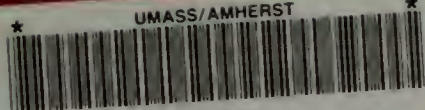


★ UMASS/AMHERST ★



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MASS. ED 38.4/2: 984-86

**AMENDMENTS, REVISIONS AND ADDITIONS
TO THE
FY 1984-1986 MASSACHUSETTS STATE PLAN
UNDER
PART B OF THE EDUCATION OF THE HANDICAPPED ACT
AS AMENDED BY P.L. 98-199**

December 1985

- I. Amendment regarding Due Process Procedures:
 - A. Letter formally amending the FY 1984-86 State Plan
 - B. Grant award letter for FY 1985
 - C. Grant award letter for FY 1986
- II. Amendment regarding Use of Part B Funds for Instructional and Administrative Technology Efforts
- III. Update on the Use of Part B Funds for FY 1987
- IV. Full Educational Opportunity Goal
State Plan Data Requirements
- V. Updated Appendices to the FY 1984-1986 State Plan:
 - A. Appendix 4 - Current Interagency Agreements
 - B. Appendix 12 - 603 C.M.R. Section 18.00, Regulations for the Approval of Private Special Education Schools to Serve Publicly Funded Students - June 1984
 - C. Appendix 13 - Revised Complaint Management System
- VI. Additional Appendix to the FY 1984-1986 State Plan:
 - A. Appendix 19 - Massachusetts Special Education Appeals Guidelines - Summer 1983



The Commonwealth of Massachusetts

Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169

August 1, 1984

Mr. David Rostetter, Acting Director
Division of Assistance to States
U.S. Department of Education
Special Education Programs
400 Maryland Avenue SW
Washington, D.C. 20202

Dear Mr. Rostetter:

This letter is intended to formally amend Massachusetts' FY 84-86 State Plan to comply with section 615(c) of the Education of the Handicapped Act by adding the following clarifications:

Effective August 1, 1984 the Bureau of Special Education Appeals will operate within the jurisdiction of the Deputy Commissioner for Program Operations and will conduct all due process proceedings pursuant to sections 300.500 through 300.514 of Title 34 of the Code of Federal Regulations.

Additionally, Section VI - Procedural Safeguards is further amended by expanding item E., Responsibilities by adding the following paragraph: "The Bureau of Special Education Appeals within the jurisdiction of the Deputy Commissioner for Program Operations guarantees the impartiality, fairness and independence of all hearing officers in the following way:

- 1) Hearing officers are employed solely for the purpose of conducting state level hearings and perform no other duties within the State Education Agency.
- 2) Decisions of hearing officers shall be independent of the agency in that they are not subject to review by the Director of the Bureau of Special Education Appeals, the Deputy Commissioner for Program Operations, the Commissioner, or Board of Education.
- 3) No hearing officer shall have any financial interest in the outcome of any hearing.
- 4) No hearing officer shall be involved in the education or care of handicapped children in the state, and may not be employed in any capacity by a local education agency.

Please add the following documents to the List of Appendices:

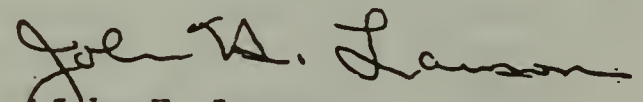
David Rostetter
July 30, 1984
Page Two

#19 Special Education Appeals Guidelines - Summer 1983

I trust that this amendment demonstrates that Massachusetts procedures are in compliance with Revised DAS 107, rendering our FY 84-86 State Plan approvable, thereby releasing our FY 85 Grant award.

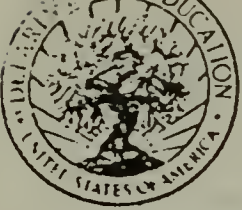
We will immediately begin necessary procedures to amend M.G.L. 71B and Chapter 766 Regulations, thereby assuring consistency between the Department reorganization and state law and regulations.

Sincerely,


John H. Lawson
Commissioner of Education

JHL/SF

cc: Wendy M. Cullar
George Hegarty
Thomasine Hardy



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

ALJ 24 1984

Honorable John H. Lawson
Commissioner of Education
State Department of Education
Quincy Center Plaza
1385 Hancock Street
Quincy, Massachusetts 02169

Dear Commissioner Lawson:

Re: Grant Award - Part B, EHA-B

By letter of July 20, 1984, you advised us of certain changes that the Massachusetts Department of Education is prepared to make in its procedures for the review of due process decisions under Part B of the Education of the Handicapped Act (EHA-B). Your letter states that, effective August 1, 1984, the Bureau of Special Education Appeals, presently in the Division of Special Education for the Department of Education, will no longer be under the Division's jurisdiction. This Bureau will be operated as a separate unit under the Deputy Commissioner for Program Operations for the Department. That Deputy Commissioner is not involved in the general supervision of or in the development of policies pertaining to educational programs for handicapped children in Massachusetts. The Deputy Commissioner, therefore, is not employed in the Division of Special Education and will not review decisions of Bureau Hearing Officers or otherwise involve himself in the exercise of their independent decision-making function.

We find that this revision to Massachusetts' procedures will ensure that due process reviews meet the statutory requirement of impartiality as set out in our Revised Bulletin No. 107.

Your July 20 letter also states that the Massachusetts FY 1984-86 State Plan under the EHA-B will be amended to reflect the changes described above and to make needed clarifications concerning the impartiality and independence of Bureau hearing officers.

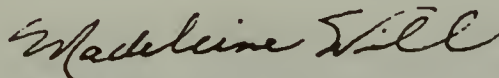
We are, therefore, pleased to forward your grant award for FY 1985 under EHA-B. This award is conditional on your confirming that the relocation of the Bureau of Special Education Appeals has occurred and on the submission of any necessary revisions to the State Plan. Please note that the effective date of the grant is July 1, 1984.

If you or any member of your staff have questions or comments regarding this program, please contact:

David Rostetter, Acting Director
Division of Assistance to States
400 Maryland Avenue, S.W.
Switzer Building, Room 3605
Washington, D.C. 20202
Telephone: (202) 732-1024

We wish you continued success in the administration of your programs.

Sincerely,



Madeleine Will
Assistant Secretary

Enclosure

cc: Mr. Roger Brown



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES

RECEIVED
8 1985

Honorable John H. Lawson
Commissioner of Education
State Department of Education
Quincy Center Plaza
1385 Hancock Street
Quincy, Massachusetts 02169

JUL 21 1985

OFFICE OF THE
ASSOCIATE COMMISSIONER

Dear Commissioner Lawson:

Re: Grant Award - Part B, EHA

We are pleased to forward your grant award for fiscal year 1986 under Part B of the Education of the Handicapped Act. Please note that the effective date of the grant is July 1, 1985.

On the basis of our review of your August 1, 1984 and June 12, 1985 letters, in which you set out amended procedures to ensure impartiality of your due process hearings, we have found that your State Plan is approvable for full funding for FY 1986. During our FY 1986 monitoring visit to Massachusetts, we will review the implementation of your amended hearing procedures.

We are releasing the EHA-B funds based on (1) the approval of your FY 1984-86 State Plan, (2) receipt of your End-of-Year Performance Report, and (3) your Department's stated intent to submit to Special Education Programs the data reports required under Section 618(b) of the EHA, as amended, within 30 calendar days of the date of this letter.

If you or any member of your staff have questions or comments regarding this program, please contact:

Edward R. Moore, Chief
Program Assistance Branch
Division of Assistance to States
400 Maryland Avenue, S.W.
Switzer Building, Room 3626
Washington, D. C. 20202
Tel: (202) 732-1048

We wish you continued success in the administration of your programs.

Sincerely,

Madeleine Will
Madeleine Will
Assistant Secretary

Enclosure

cc: State Director

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202



The Commonwealth of Massachusetts

Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169

June 14, 1984

Mr. David Rostetter, Acting Director
Division of Assistance to States
U.S. Department of Education
Special Education Programs
400 Maryland Ave., S.W.
Washington, D.C. 20202-4814

Dear Mr. Rostetter:

The purpose of this letter is to formally advise you of our continued and expanding use of our state agency's share of Part B funds for the improvement of instructional and administrative technological capabilities.

During FY '85 the Division is embarking on an effort to further develop sophisticated electronic data collection capacities for both public and private service providers, to design a comprehensive resource bank and establish information networking capabilities between LEA's, our six regional offices and the Division.

The benefits of this plan include providing LEA's with vastly more efficient data management capabilities, in addition to immediate access to available resources for child specific and programmatic needs.

Additionally, the plan will enable the Division to provide more timely response in resolving monitoring and compliance issues. As we begin to computerize resource banks our capabilities in assisting LEA's in providing more appropriate services will be enhanced.

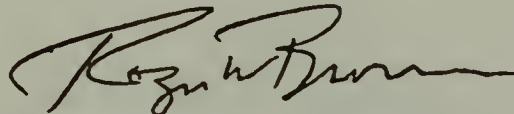
LEA's are allowed to purchase computer hardware and software with Part B funds for instructional purposes with prior approval of their annual Local Education Agency Applications and Annual Program Plans for Special Education (attachment 1 to the FY '84-86 State Plan). They are also

allowed under the same approval process to purchase equipment for administrative purposes only if the beneficiaries are special needs students.

Please incorporate this information in our FY '84-86 State Plan. Please contact Nancy Burchill, State Plan Officer, at (617) 770-7469 if you have any questions.

Thank you for your continued assistance.

Sincerely,



Roger W. Brown
Associate Commissioner
Special Education

/bpg

cc: Gerald Boyd
State Plan Officer

II. FULL EDUCATIONAL OPPORTUNITIES GOAL AND TIMELINES

A. Federal Requirements

The Plan must show that Massachusetts has a goal of providing full educational opportunities to all children with special needs from birth through age twenty-one (300.123). The Plan must also contain a detailed timetable for accomplishing this goal (300.125). Required data on children, facilities and services must be submitted in the financial and performance reports.

B. Goal Statement

Chapter 766, in Section 1, states that it is "the purpose of this act to provide for ... special education program opportunities for all children requiring special education." Section 2 of Chapter 71B of the Massachusetts General Law (Appendix 17) permits us to admit children with severe special needs to programs at an age earlier than ordinary.

The Department of Education, working together with various human service agencies, provides a free and appropriate public education for children with special needs in the 0 to 2 age group. The Department of Mental Health and the Department of Public Health are currently serving this population through early intervention programs. The Department of Education continues to coordinate publically supported programs with other state agencies and encourages the expansion of these programs. Early childhood staff are assigned to the regional education centers to work cooperatively with the state agencies who serve this population. The Department of Education supports the voluntary action of school districts to serve youngsters below age 3 and allows local education agencies to report these special education expenditures when computing state aid.

An agency providing services to children under age three must notify the appropriate school district which will be responsible for that child at age three. The agency will refer that child at about age two and a half and designate a representative to participate in the public school's evaluation (304.8).

We will continue to provide full educational opportunity to all children with special needs, ages 3 through 21. We expect to be able to train personnel and develop facilities and services to meet that goal.

The Division of Special Education has developed an increased capability to review local school district compliance with Public Law 94-142 as described in Section XV(B). The division has established a system for responding to complaints concerning noncompliance by local school systems and other agencies (Complaint Management System is included as Appendix 13). The complaint/compliance process, together with our extensive statewide technical assistance efforts through staff and grants program, make

it possible for us to provide full educational opportunities to children ages 3 through 21. Section 338 of the revised Chapter 766 regulations requires school systems to cooperate with human service agencies in developing programs for young persons with special needs who may require special services beyond high school graduation.

C. Responsibility

The director of the Bureau of Institutional Schools has overall responsibility for insuring that the Division of Special Education carries out the commitments in this section of the Plan. The director of the Bureau of Program Development and Evaluation will see that we carry out technical assistance efforts for early childhood programs effectively. The director of the Bureau of Institutional Schools will insure that the interagency arrangements transferring responsibility for children at age 21 function properly.

The director of Bureau of Program Development and Evaluation, through the Early Childhood Project, will insure that coordination and interagency arrangements transferring responsibility for children at age 3 function properly.

The director of the Bureau of Program Audit and Assistance will insure that the program audit, compliance review, and complaint systems effectively apply the requirements of Public Law 94-142 to local school systems. That director will also examine, in the compliance review and program audit, how school systems carry out the Chapter 766 requirements for early childhood screening.

The director of the Bureau of Institutional Schools will insure that statewide programs for children in state operated facilities who are found to need special education, provide full educational opportunities for those young persons. The director of the Bureau of Management will collect the necessary data and submit end-of-year reports for fiscal years 1984, 1985 and 1986.

XV.(D) POLICIES AND PROCEDURES FOR USE OF PART B FUNDS

A. Federal Requirements

The State Plan must describe Massachusetts' policies and procedures which insure that funds paid to the state under Part B are spent as required by the sections of Public Law 94-142 mentioned in this subsection.

In fiscal year 1978, the federal law required Massachusetts to distribute 50% of Part B funds to local school systems for Part B priorities and allowed the state to use the rest. Of the state's 50%, the federal law allowed Massachusetts to use 5% for administrative costs and required that the state use the rest for support services and direct services related to Part B priorities (Section 611(b)). From fiscal year 1979 on, the federal law required Massachusetts to distribute 75% of Part B funds to local school systems for Part B priorities. Of the State's 25%, the federal law again allowed 5% for administrative costs and required Massachusetts to use the rest for support and direct services related to the priorities (Section 611(a)). The federal law requires that the State match with State funds the portion of the State's, 25% share of Part B funds used for direct and support services (Section 611(c)(2)(B)).

The federal law forbids the state to fund local school systems unless those systems meet the following conditions: The state may not fund a local entitlement of less than \$7,500. The local school system must submit an application complying with the requirements of Public Law 94-142. That application must show that the school system will use the Part B funds for children needing special education for whom the system is responsible (Section 611(c)(4)(a)). The state must compute a local school system entitlement based on the number of children receiving special education, ages 3 through 21, served by that school system. (Section 611(d)).

In order to qualify for Part B funds, Massachusetts must describe policies and procedures that comply with the following requirements of Public Law 94-142: Massachusetts must establish a goal of providing full education opportunity to all children needing special education. The state must make available a free appropriate public education to children needing special education, ages 3 through 18, by September 1, 1978 and ages 3 through 21, by September 1, 1980. The state must identify, locate, evaluate, and keep track of all children needing special education. The state and local school systems must comply with the federal requirements for protecting the confidentiality of personally identifiable information concerning young persons needing special education. The state must make the State Plan available to the public at least thirty days prior to its official submission to the U.S. Commissioner of Education (Section 612 (2)).

B. Policy and Procedures

The following table shows how Massachusetts actually distributed and plans to distribute Part B funds:

TABLE I
USE OF PART B FUNDS

<u>Fiscal Year</u>	<u>Direct & Admin. Costs</u>	<u>Support Services</u>	<u>Local School Systems</u>
1978	5%	33%	62%
1979	5%	20%	75%
1980	5%	16%	79%
1981	5%	6.1%	88.9%
1982	5%	6.1%	88.9%
1983	5%	3%	92%
1984	5%	2%	93%
1985	5%	2%	93%
1986	5%	2%	93%
1987	5%	5%	90%

The State Department of Education has recommended the following amounts in fiscal year 1984 to more than match the estimated amount in Part B funds which the state will use for direct and support services:

FY '87 Budget Request

Administration	\$ 1,915,658
Bureau of Institutional Schools	10,675,891
Institutional Schools Incentive Program	2,084,156
Department of Education	
Private School Placements (Chapter 750)	14,448,281
Department of Public Welfare	
School Placements (Chapter 750)	349,229
Total:	<u>\$29,473,215</u>

The revised Local Educational Agency Application and Annual Program Plan (Appendix 1) describe the policies and procedures governing what local school systems must do to obtain their Part B entitlement funds. The Department of Education includes a provision whereby local school districts can utilize up to \$2,500 of their Public Law 94-142 entitlement dollars for "improving the cost-effectiveness of special education or administrative

operations regarding special education" (34 CFR, Part 74, Appendix C (5)).

The Department determines the entitlements of local school systems using the federal formula and notifies school systems of their entitlements. For fiscal year 1984 we are computing local entitlements allowing \$255 per child. We are basing the count on the average number of children reported for whom the school system is providing special education, excluding children counted under Public Law 89-313.

We describe the policies and procedures that comply with the requirements of Public Law 94-142, Section 612, in other sections of this Plan and list them below for cross-reference.

Requirement	FY 1984-86 Plan Section
Goal of full educational opportunity	II
Availability of a free appropriate public education	I
Identification, location, evaluation	IV, V, VII
Confidentiality of personally identifiable information	XVI
Availability of the plan to the public	vii-xii
Submission statements and certifications	i-xiv

C. Description and Use of Part B Funds

1. Federal Requirements

The State Plan must describe how Massachusetts will use Part B funds for the 1984, 1985 and 1986 school years. Information must be included for each of the following areas:

a) State Allocation

- o a list of each position to be paid in whole or part with Part B funds and a description of each of these positions;
- o for each state position, the percentage of salary to be paid with part B funds;
- o a description of each administrative activity the state education agency will carry out during the school years with Part B funds;
- o a description of each direct service and each support service which the state education agency will provide during the school years with Part B funds
- o the activities the State Advisory Panel will undertake during the school years with Part B funds; and
- o estimates of expenditures for personnel development activities supported by Part B Funds.

b) Local Allocation

- estimates of the number and percent of local education agencies in the state which will receive an allocation under Part B (other than local educational agencies which submit a consolidated application);
- estimates of the number of local educational agencies which will receive an allocation under a consolidated application;
- estimates of the number of consolidated applications and the average number of local educational agencies per application;
- a description of direct services the state educational agency will provide under Part B; and
- estimates of expenditures for personnel development activities supported by Part B funds, if any.

2. Massachusetts Data and Information

a) State Allocation

- 1) Table 5 lists Department of Education staff positions paid out of Part B funds as of October 15, 1982. We project that the expenditure of funds for Part B supported positions will remain constant over the next three school years.

Since the submission of the FY 1981-83 State Plan, 11 staff positions supported by Part B funds have been created. (Position #'s 9064-9074). We expect the amount of PL 94-142 funding will determine how many of these positions can be filled. Table 2 lists all positions supported by Part B funds.

- 2) Each state position listed will be paid entirely with Part B funds.
- 3) The administrative activities that the Department will carry out with Part B funds for each of the next three school years are indicated in Table 2. Generally, these activities include the following:
 - clerical support for the Division of Special Education;
 - management of federal funds in special education;
 - auditing of federal programs in special education;
 - administration of the appeals process in special education;
 - operation of the complaint system in special education;

- o coordination of special education in-service training
 - o supervision of services to children placed in private schools providing special by public agencies.
- 4) A description of each direct and support service furnished by the Department, using Part B funds, is included in Sections IV, IX, XV(D).
- 5) Activities which the State Advisory Commission will undertake during the next three years with Part B funds include the following:
- o evaluating the adequacy of special education in Massachusetts;
 - o commenting publicly on the State Plan, Regulations, and procedures for distribution of Part B funds;
 - o deciding appeals from the Bureau of Special Education Appeals;
 - o supportive guidance and technical assistance to Regional Advisory Councils.
- A more thorough description of State Advisory Commission activities is given in Section XV(B).
- 6) Estimates and descriptions of personnel development activities supported by Part B funds are included in Section IX.

b) Local Education Agency Allocation

The following table responds to the requirements stated in the previous subsection.

Requirements	FY '87
1) Local educational agencies receiving Part B funds:	
Number	300
Percentage	85%
2) Local educational agencies receiving funds under consolidated application	60
3) Number of consolidated applications	17

FY '87

Average number of local
educational agencies per
application

3

4) The Department furnishes no
direct services using local
school system allocations.

5) Estimate of expenditures for
personnel development
activities supported by
Part B funds

\$500,000

D. Responsibilities

The director of the Bureau of Management is responsible for insuring that the policies and procedures for the use of Part B funds described in this section comply with the requirements in the federal regulations (121.a148) and federal law (Public Law 94-142, Sections 611(b), 611(c), 611(d), 612(2) and 612(3)). That director is also responsible for insuring that the state distributes Part B funds in the proper ratios, using the federal formula. The director is also responsible for collecting data to determine whether allocations of state level funds match Part B funds used for services at the state level. In addition, that director is responsible for informing local school systems concerning what they must do to obtain their Part B entitlements.

The director of the Bureau of Program Audit and Assistance is responsible for preparing and revising the local school system application to conform with federal requirements. The director of the Bureau of Program Audit and Assistance is responsible for review of local school system applications at the regional education center. We describe responsibility for the requirements of Section 612 in the cross-referenced sections of this Plan.

TABLE 2

DEPARTMENT OF EDUCATION PERSONNEL
PAID WITH ADMINISTRATIVE PART B FUNDS

<u>Position #</u>	<u>Position Title</u>	<u>Staff</u>	<u>Bureau</u>	<u>Office</u>	<u>Activity</u>
9000	ES III 20	Michelle Ciocca	PA & A	NEREC	Federal Funds Management
9001	ES III 20	Franklin Sherbourne	PA & A	SEREC	Federal Funds Management
9002	ES III 20	Consuelo Fitzgerald	PD & E	Central	Evaluation of Special Ed. States
9004	Senior 06 Clerk Typist	Evelyn Dunne	PA & A	Central	Clerical Support for Prof. Staff
9005	Senior 06 Clerk Typist	Vacant	PD & E	Central	Clerical Support for Prof. Staff
9006	Junior 12 Accountant	Victoria Munoz	Management	Central	Fiscal Management
9008	Senior 16 Accountant	David Webster	Management	Central	Fiscal Management
9009	ES IV 22	Arthur Stewart	Appeals	Central	Administration of Due Process
9015	ES II 18	Harold Stone	Management	Central	Fiscal Management

<u>Postion #</u>	<u>Position Title</u>	<u>Staff</u>	<u>Bureau</u>	<u>Office</u>	<u>Activity</u>
9016	ES II 18	Vacant	PA & A	GBREC	Compliance Management Technical Assistance
9017	ES III 20	Lorraine Moore	PA & A	NEREC	Compliance Management Technical Assistance
9019	Senior Clerk Stenographer	07 Dorothy Paicos	Appeals	NEREC	Clerical Support for Prof. Staff
9020	Senior Clerk Stenographer	07 J. Downie	Appeals	SPREC	Clerical Support for Prof. Staff
9021	Senior Clerk Stenographer	07 K. Aguilar	Appeals	SEREC	Clerical Support for Prof. Staff
9022	Senior Clerk Stenographer	07 W. Kalweit	Appeals	GBREC	Clerical Support for Prof. Staff
9023	Senior Clerk Stenographer	07 Donna Brathwaite	Appeals	Central	Clerical Support for Prof. Staff
9024	Senior Clerk	07 Donna Dube	Appeals	SEREC	Clerical Support for Prof. Staff
9025	ES III 20	Gloria Arcisz	PA & A	GBREC	Compliance Management Technical Assistance
9026	Senior 06 Clerk Typist	Vacant	Teacher Certification	Central	Clerical Support for Prof. Staff

<u>Postion #</u>	<u>Position Title</u>	<u>Staff</u>	<u>Bureau</u>	<u>Office</u>	<u>Activity</u>
9027	Senior 06 Clerk Typist	M. Iandoli	PA & A	Central	Clerical Support for Prof. Staff
9028	Senior 06 Clerk Typist	Vacant	Appeals	Central	Clerical Support for Prof. Staff
9029	Senior 06 Clerk Typist	Vacant	PD & E	Central	Clerical Support for Prof. Staff
9030	Senior 06 Clerk Typist	Vacant	Management	Central	Clerical Support for Prof. Staff
9031	Principal 09 Clerk	Vacant	Management	Central	Clerical Support for Prof. Staff
9032	ES III 20	John Abramson	PA & A	GBREC	Compliance Management Technical Assistance
9033	ES III 20	Mary Burch	Appeals	GBREC	Administration of Due Process
9034	ES III 20	Melissa Broderick	Appeals	CMREC	Administration of Due Process
9035	ES III 20	Ronald Honesty	PA & A	GBREC	Federal Funds Management
9036	ES III 20	Karen Matthews	Appeals	NWREC	Administration of Due Process
9037	ES I 15	John LeClair	Management	Central	Fiscal Management

<u>Postion #</u>	<u>Position Title</u>	<u>Staff</u>	<u>Bureau</u>	<u>Office</u>	<u>Activity</u>
9038	ES III 20	Vacant	PA & A	GBREC	Compliance Management Technical Assistance
9039	ES III 20	R.A. Melanson	PA & A	CMREC	Federal Funds Manangement
9040	ES II 18	Vacant	PA & A	NEREC	Compliance Management Technical Assistance
9041	ES III 20	Linda Jane Estes	PA & A	GSREC	Compliance Management Technical Assistance
9042	ES I 14	Delva Bent	PA & A	Central	Compliance Management Technical Assistance
9043	Hearing 14 Stenographer	Marilyn DiStaula	Appeals	Central	Administration of In-Service Training
9044	ES IV 22	Nancy Burchill	Associate Commissioner	Central	State Advisory Commission State Plan
9045	ES III 20	Miriam Freedman	Appeals	Central	Administration of Due Process
9046	ES III 20	Priscilla Haverly	Management	Central	Federal Funds Management
9047	ES III 20	Ray Oliver	Appeals	Central	Administration of Due Process
9048	ES III 20	R. Notarangelo	PA & A	SPREC	Compliance Review

<u>Postion #</u>	<u>Position Title</u>	<u>Staff</u>	<u>Bureau</u>	<u>Office</u>	<u>Activity</u>
9049	ES III 20	Susan Hitchcock	PA & A	CMREC	Compliance Management Technical Assistance
9050	ES II 18	Ruby Brathwaite	Appeals	Central	Administration of Due Process
9051	ES III 20	Vacant	PA & A	Central	Compliance Management Technical Assistance
9052	Head Clerk 11	Rene Gaeta	Management	Central	Clerical Support for Prof. Staff
9053	Principal 09 Clerk	Vacant	Management	Central	Clerical Support for Prof. Staff
9054	Principal 09 Clerk	Cielo Cortes	Appeals	Central	Clerical Support for Prof. Staff
9055	Senior Clerk 07 & Stenographer	Shirley Hubbard	PA & A	CMREC	Clerical Support for Prof. Staff
9056	Senior 06 Clerk Typist	M. O'Brien	PA & A	CMREC	Clerical Support for Prof. Staff
9057	ES IV 21	Lewis Williams	PA & A	Central	Implements Service Delivery Com- ponents for State-Funded Children
9058	Executive 28 Director	Judith Riegelhaupt	Associate Commissioner	Central	Coordinates All Special Education Activities

<u>Postion #</u>	<u>Position Title</u>	<u>Staff</u>	<u>Bureau</u>	<u>Office</u>	<u>Activity</u>
9059	Principal Clerk 09	Diana St. Fleur	Associate Commissioner	Central	Clerical Support for Prof. Staff
9060	Head Clerk 11	Sandra Linsky	PA & A	Central	Clerical Support for Prof. Staff
9063	Principal Clerk 09	Ruth McLaughlin	PA & A	Central	Clerical Support for Prof. Staff
9064	ES III 20	Peter DePaolo	PD & E	Central	Coordinates Statewide Inservice Training
9065	Administrative Assistant	Jeff Johnson	Management	Central	Support for Prof. Staff
9066	ES III 20	Mitzi Beech	Associate Commissioner	GSREC	Compliance Management Technical Assistance
9067	Grants Management Specialist	John Cunningham	Management	Central	Federal Funds/Grants Manager
9068	Senior Bookkeeper	Selma Aronson	Management	Central	Federal Funds/Grants Management
9069	Manager IV	Marie Lindahl	PA & A	Central	Assistant Director of Bureau of Program Audit and Assistance
9070	Head Clerk	June Breed	PD & E	Central	Clerical
9071	Senior Accountant	Vacant	Business Office		

<u>Postion #</u>	<u>Position Title</u>	<u>Staff</u>	<u>Bureau</u>	<u>Office</u>	<u>Activity</u>
9072	ES III 20	K. White	PA & A	GBREC	Compliance Management/ Technical Assistance
9073	ES III 20	Vacant	PA & A	GBREC	Compliance Management Technical Assistance
9074	ES III 20	Laura Lambrix	PA & A	Central	Private School Review

II. Full Educational Opportunity Goal

Massachusetts further assures full educational opportunity to children birth through twenty-one through the enactment in 1983 of Chapter 699 of the Massachusetts General Laws. This legislation provides early intervention services for children from birth to three who have handicapping conditions or are at risk for such conditions. These services are designed to minimize the potential for developmental delays and institutionalization. It mandates the Department of Public Health to:

- establish a statewide system of early intervention programs
- develop regulations
- evaluate, monitor and assess program effectiveness

Chapter 688 of the Acts of 1983 further assures transitional services to young adults whose age (22) or graduation no longer entitle them to special education. The responsibility for this program lies within the Executive Office of Human Services.

The Department has twenty-five agreements in place with other human service agencies (see Appendix 4) delineating service delivery and respective responsibilities. These agreements represent a range of services across the age continuum and are continually monitored. The partnerships between the Department of Education and other Human Service providers are crucial in assuring continued expansion of services to young people with special needs.

Areas in need of improvement are identified through targetted monitoring, program audits, the complaint management system, and LEA Annual Program Plan approval processes (see Section XV). The Division provides incentives to local school districts for program and service improvements through grants programs in early childhood education, technical assistance grants for priority areas, vocational education programs, and in-service training grants. Greater detail is provided in Section IX. The Department continues to encourage program evaluation by local school districts through the use of Special Education Program Evaluation: A Management Tool. Procedures have been refined and training is planned for over 160 LEAs.

Chapter 766 of the Acts of 1972 states in Section 1M(19) that the Department, through the Division of Special Education, shall take all steps "...to ensure that state and local expenditures for Special Education provide the maximum feasible benefit to every child receiving or requiring special education..." This standard, adopted thirteen years ago, remains our goal. Massachusetts has made tremendous strides in accomplishing the goal of improved and expanded services to young people with special needs in the Commonwealth. We will continue to direct our resources toward the end that each child receives the maximum feasible benefit of special education services.

Appendix 4

Agreements Between Various Public Agencies and the Department of Education

DEPARTMENT OF SOCIAL SERVICES FOR THE EDUCATIONAL
ADVOCATE (SURROGATE PARENT) PROGRAM

This agreement is made and entered into this 2 day of July, 1981 by and between the Commonwealth of Massachusetts Department of Social Services (DSS) and the Department of Education (DOE).

WHEREAS, DOE has the statutory responsibility of insuring that a free appropriate public education is available to all children in the Commonwealth in need of special education services aged 3 through 21, regardless of race, sex, religion, ethnic origin, and/or physical or mental handicap; and that each child under 18 is represented by an adult acting in the role of "parent" or appointed "Surrogate Parent (Educational Advocate)."

WHEREAS, DSS has the statutory responsibility of determining the place of abode, medical care, and education for children in its custody; and has the responsibility pursuant to certain voluntary agreements to determine the education for certain children in its care or custody.

WHEREAS, both agencies are deeply committed to the provision of appropriate services for those children in need of special education.

NOW THEREFORE, the parties in consideration of the mutual promises made thereunder hereby agree as follows:

I. DOE SHALL:

A. Recruit and train appropriate adults who will be available to be matched with specific eligible children as Educational Advocates.

B. Provide staff to assist the DSS in training foster parents and other individuals selected by DSS to represent the children in the special education process in accordance with Attachment A. These individuals will be trained in the areas of: a) special education laws, regulations, and processes; and b) various types of special educational needs.

C. Accept from DSS the referral of children who are thought to need an Educational Advocate and for whom the DSS has not recommended a specific individual to represent the child in the special education process. Such children may include those children in the care and custody of DSS who are receiving special education services, thought to need special education services, or who have been referred for a special education evaluation. All such referrals of children will be screened by the Educational Advocate Program staff to insure their eligibility.

D. Match each eligible child with an appropriate Educational Advocate and recommend this match to DSS. Each of these individual Educational Advocates will be screened by DOE to determine that s/he a) is not an employee of a public agency involved in the education or care of the child; b) has no interest, real or apparent, that conflicts with the interests of the child; and c) has knowledge and skills that insure adequate representation of the child.

E. Supervise all appointed individual Educational Advocates as outlined in "Monitoring of Educational Advocates" (see Attachment D).

F. Monitor DSS in the fulfillment of its role in the Educational Advocate Program.

II. DSS SHALL:

A. Screen children in its custody from age 3 up to the 18th birthday who are receiving special education services, who are thought to need special education services, or who have been referred for a special education evaluation, to determine what appropriate adult is available to act in the child's behalf in the special education process, as per "Guidelines for Determination of Person Representing Children in the Special Education Process Who Are in the Custody of the Department of Social Services " (see Attachment A).

B. For each child who is receiving special education services, who is thought to need special education services, or who has been referred for a special education evaluation, and who is thought to be in need of an Educational Advocate, refer the child to the Educational Advocate Program of DOE, using the "Child Eligibility" form (see Attachment B).

C. Receive and review information on each recommended Educational Advocate.

D. Assign, in writing, the Educational Advocate to the eligible child, using the format as outlined in Attachment C. Copies of this appointment letter shall be sent to the Educational Advocate Program of the DOE, the local education agency, the child's social worker, the child's parents where appropriate and the person or facility having physical custody of the child.

E. Designate an employee (or employees) to act as liaison to the Educational Advocate Program.

F. Provide each assigned Educational Advocate a monthly stipend at a set rate toward covering the cost of transportation, xeroxing, and telephone calls.

G. Provide training, with the assistance of staff from the Educational Advocate Program, to foster parents and other individuals selected by DSS to represent children in the special education process, and to social workers.

H. Monitor the DOE in the fulfillment of its role in the Educational Advocate Program.

I. Assist DOE in the recruitment of appropriate adults who will be available to be matched with specific children as Educational Advocates.

III. General Provisions

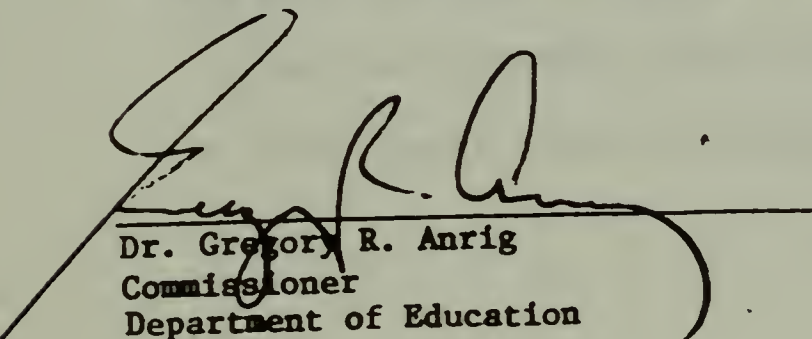
A. Disputes concerning appointments and/or adequacy of Educational Advocates will be resolved administratively by the DSS Liaison and the Educational Advocate Program staff. The provisions of this agreement shall not form the basis for any hearing before the Bureau of Special Education Appeals of the Department of Education pursuant to G.L. Chapter 15, section 1M.

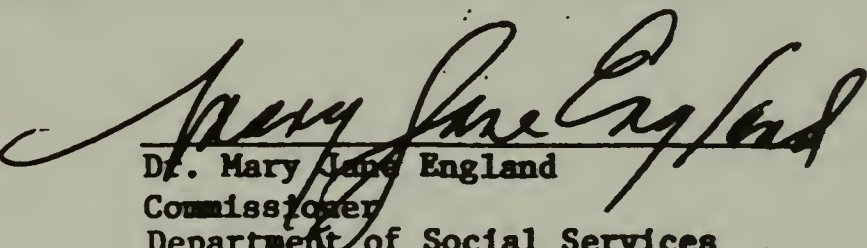
B. Educational Advocates shall be "holders" of "personal data" within the meaning of G.L. Chapter 66A, and may release personal data concerning the child only in accordance with G.L. Chapter 66A and the governing regulations and in the fulfillment of their roles as Educational Advocates.

C. This agreement does not apply to those children in the care of DSS pursuant to a voluntary agreement whereby the child's parents have retained the right to determine education. This agreement applies to those children in the custody of the DSS for whom DSS has specifically delegated the authority to determine education to the parents of those children as outlined in Attachment A.

D. A child's social worker shall represent such child in the special education process for no longer than six months from the effective date of this agreement, or until an Educational Advocate or an appropriate person is designated or appointed, in accordance with Attachment A, whichever is earlier.

This agreement shall become effective as of the 2 day of July, 1981 and shall remain in effect until terminated by either party sending written notification to the other party at least 60 days in advance of the intended termination date.


Dr. Gregory R. Anrig
Commissioner
Department of Education


Dr. Mary Jane England
Commissioner
Department of Social Services

GUIDELINES FOR DETERMINATION OF PERSON
REPRESENTING CHILDREN IN SPECIAL EDUCATION MATTERS WHO
ARE IN CUSTODY OF THE DEPARTMENT OF SOCIAL SERVICES

The Department of Social Services is mandated by Chapter 119 of the Massachusetts General Laws to determine, among other things, the education received by children in its custody including children with special needs. For those children in the Department's custody who are receiving special education services, or who are believed to be in need of special education services, or who have been referred for evaluation for special education services; a determination must be made as to who will represent the child in the special education process.

The DSS operates according to the presumption that parents are the most appropriate persons to act on behalf of their children in educational matters. For that reason, the DSS does not necessarily require parents who enter into voluntary agreements for the care of their children to delegate the right to determine education. Also for that reason, the authority to determine education for children in DSS custody will be delegated to parents in all cases except where 1) the parents are unavailable; 2) the parents are unwilling; 3) the parents are unable; or 4) parental representation would conflict with the needs of the children.

These guidelines do not apply to cases where the DSS has not retained the authority to determine education. For those cases to which the guidelines do apply, the DSS social worker assigned to the child will determine who should represent the child for educational matters according to the following guidelines. Once such determination is made, the Department of Education, through the Educational Advocate Program, is responsible for monitoring the process to determine that each child is being adequately and appropriately represented.

I. AS STATED ABOVE, THE PARENT IS THE PRIMARY PERSON TO BE CONSIDERED AS THE CHILD'S REPRESENTATIVE.

II. ADULT FAMILY MEMBER OTHER THAN PARENT

A child in the custody of the DSS often retains contact with his parents and family. Although the parents may be deemed inappropriate to represent the child in educational matters, another family member such as grandparent, aunt or uncle, or adult sibling may be a suitable representative. The criteria to be used to determine if such family member is appropriate are:

1. The DSS social worker assigned to the case determines that although the parents are not appropriate to represent the child, the relationship between the parents and child is sufficiently viable to justify appointing another family member;
2. That family member has an ongoing relationship with the child; and
3. That family member is willing.

III. FOSTER PARENT

If the child is placed in a Department of Social Services approved foster home, on a full-time or on a temporary visiting basis, the foster parent should be the next considered to act in the child's behalf in educational matters. The criterion to be used to determine if the foster parent is appropriate is:

If the foster parent through the Child Specific Placement Agreement has been offered and has accepted this responsibility.

IV. VISITING HOME, BIG BROTHER/BIG SISTER, OTHER VOLUNTEER WORKING WITH THE CHILD

Some children in the custody of the Department of Social Services have adults involved with them on a volunteer basis; it is preferable to appoint someone already working with the child to act in behalf of the child in educational matters rather than to appoint someone who has no previous relationship with the child. The criteria to be used to determine if a volunteer is appropriate to be appointed Educational Advocate are:

1. If the volunteer is willing;
2. If the volunteer has sufficient time;
3. If the volunteer has knowledge of the Special Education process and/or is willing to be trained; and
4. If the volunteer has no real or apparent conflict of interest.

V. OTHER VOLUNTEER TRAINED BY THE DIVISION OF SPECIAL EDUCATION

These persons are trained and supervised by the Division of Special Education to act in behalf of a child in educational matters. The criteria to be used to determine if a volunteer is appropriate to be appointed an Educational Advocate for a specific child are:

1. If none of the above (I, II, III, or IV) are appropriate; and
2. If the Educational Advocate accepts the assignment for the specific child.

Dear _____:

After careful consideration of your qualifications, I am pleased to inform you of your appointment as an Educational Advocate (Surrogate Parent) for _____.

The Department of Social Services is responsible for the care and custody of this child. In your role as an Educational Advocate, you are authorized by the Department to perform the following functions:

- o To represent _____ in all special education matters relating to the identification, evaluation, provision of special education services and placement.
- o Represent _____ at all special education meetings.
- o Receive written progress reports from the school.
- o Accept or reject an Individual Education Plan.
- o When necessary, follow a case through the appeals process.

In accepting the role of Educational Advocate, the Department of Social Services expects that you will act in the best interest of the child. In order for the Department to fulfill its obligations, it is necessary that you keep _____'s social worker informed of all pertinent information, particularly decisions regarding IEP's, discuss any placement plans with _____'s social worker prior to informing the LEA of your decision, receive ongoing supervision and training from the Educational Advocate Program and follow the guidelines for the role of Educational Advocate as outlined by Chapter 766, PL 94-142, the Educational Advocate Program, and the Department of Social Services.

Please contact Betsy Burch or Paula Gauthier at the Division of Special Education, Bureau of Special Education Appeals, Educational Advocate Program, 31 St. James Avenue, Boston, Mass., 02116 or telephone 727-8534 for further instructions on how to proceed with this assignment.

Thank you for your participation in this worthwhile program.

Very truly yours,

MARY JANE ENGLAND
COMMISSIONER
DEPARTMENT OF SOCIAL SERVICES

cc: Betsy Burch, Director, Educational Advocate Program
_____, LEA Representative
_____, DSS Social Worker
_____, Residential Representative
Any other professionals working with the child

MASSACHUSETTS

Monitoring of Educational Advocates (Surrogate Parents)

The staff of the Educational Advocate Program of the Division of Special Education provides direct monitoring of individual Educational Advocates. This monitoring includes the following:

- 1) to provide technical assistance on special education processes, services, laws and regulations (as would be done for any parent);
- 2) to assist the Educational Advocate in establishing his/her role with those LEA's, social workers, etc. who may question it;
- 3) to insure that each Educational Advocate is working within the boundaries of his/her role;
- 4) to meet with each Educational Advocate upon request to discuss ongoing role, progress, problems, etc;
- 5) to receive and review quarterly progress reports from each Educational Advocate;
- 6) to determine if an Educational Advocate is in need of assistance from an advocate and, if so, to provide them with the names of several advocacy organizations (as would be done for any parent); and
- 7) to determine if an Educational Advocate is in need of retraining and to refer them to the Coordinator of Recruitment and Training for same.

The actual monitoring will be done by the Director of the Educational Advocate Program and the Assistant in conjunction with the Bureau of Special Education Appeals Regional Office staff. The regional staff will be responsible particularly for #1 above and will work with the Director and Assistant on 2, 3, 6, and 7. The Director and Assistant will handle 4 and 5.



The Commonwealth of Massachusetts

Department of Mental Health

DIVISION OF CHILD/ADOLESCENT SERVICES

160 NORTH WASHINGTON ST., BOSTON, MASS. 02114

(617) 727-9850

Mark J. Mills, J.D., M.D.
Commissioner

July 10, 1981

Roger W. Brown
Associate Commissioner
Department of Education
31 St. James Avenue
Boston, MA 02116

Dear Associate Commissioner Brown,

I have received your final draft of the State Hospital Education Program Interagency Agreement. It is a well thought out document. I am pleased to sign it. Cooperative efforts such as this are a real benefit to those children for whom we have joint responsibility.

Sincerely,

A handwritten signature in cursive script that reads "Mark J. Mills".

Mark J. Mills, J.D., M.D.

MJM/af

CC: Vera S. Paster, Ph.D.

AGREEMENT BETWEEN THE DEPARTMENT OF
EDUCATION AND THE DEPARTMENT OF MENTAL
HEALTH FOR THE STATE HOSPITAL EDUCATION
PROGRAMS

This Agreement is made between the Commonwealth of Massachusetts Department of Mental Health (DMH) and the Department of Education (DOE).

WHEREAS, DMH has the responsibility of providing residential, medical, clinical, psychological and psychiatric services to adolescents admitted to and discharged from its State Hospitals and Mental Health Centers.

WHEREAS, DOE has the responsibility for insuring that a free, appropriate public education is made available to all children in the Commonwealth aged 3 through 21, regardless of race, sex, religion, ethnic origin, or physical or mental handicap.

WHEREAS, both agencies are deeply aware of the lack of coordinated services for institutionalized youths in the past and desire to establish a system which will provide the least restrictive and most humane services to such adolescents.

In consideration of the mutual promises made below the parties hereby agree as follows:

I. DMH shall:

A. Provide required residential, medical, clinical, psychological and psychiatric services to adolescents admitted to DMH state hospitals and facilities, including appropriate assessments as requested for TEAM evaluation.

B. Coordinate, with DOE through its State Hospital Education Programs (SHEP) and through the area units at the state hospitals, the planning and provision of treatment and education services for all SHEP youth.

C. Through its Regional and/or Area offices, be responsible for the identification of staff at each facility who will serve as Liaison to each SHEP.

D. Through its Regional offices, be responsible for the identification and negotiation of suitable space within each institution for each program.

E. Through its Area offices, be responsible for the planning, implementation and continuity of aftercare services for discharged students i.e., residential, medical, psychological and psychiatric.

F. Through its Regional and Area offices, coordinate through joint program planning with the DOE and the SHEPs the delivery of special education and mental health services to youths leaving the hospital programs.

G. With the DOE, actively engage in long range planning for community alternatives to institutional programs for adolescent youths.

II. DOE shall:

A. Arrange for continued funding for programs at the following institutions:

1. Northampton State Hospital
2. Worcester State Hospital
3. Danvers State Hospital
4. Solomon Mental Health Center
5. Metropolitan State Hospital
6. Westborough State Hospital (Cambridge-Somerville and South Middlesex Unit and Westborough/Marlborough Unit)
7. Medfield State Hospital
8. Boston State Hospital (Bay Cove Unit, Dorchester Unit, West Ros Park Unit)
9. Solomon Carter Fuller Mental Health Center
10. Lindemann Mental Health Center
11. Massachusetts Mental Health Center
12. Taunton State Hospital
13. Pocasset Mental Health Center
14. Corrigan Mental Health Center

The amount of funding available for each fiscal year is contingent upon state resources available to the Bureau of Institutional Schools. The funding and ultimate implementation of the programs shall be determined through a Request for Proposal process which will be the joint responsibility of the Bureau of Institutional Schools and DMH.

B. Be responsible for insuring that the requirements of Subpart F State Administration of the PL94-142 Regulations as set forth in Attachment A to this agreement and made a part hereto, are appropriately fulfilled;

1. through fiscal monitoring by the Division of Special Education (DOE)
2. through annual programmatic monitoring utilizing the Program Analysis Instrument in conjunction with DMH, through their respective central and regional offices.

C. Be responsible, through the DSE and Local education agencies, for the continuity of special education services for youths leaving a State Hospital Education Program. This responsibility includes referral, evaluation and placement in the least restrictive special education program.

D. Continue its data collection system regarding provision of services to 766 eligible students admitted to the DMH state facilities. This data will be distributed to Central DMH on a regular basis.

III. The parties further agree that:

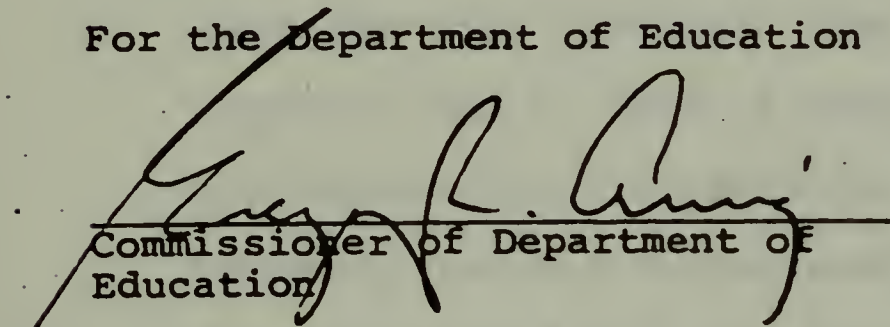
A. This agreement may be amended upon mutual agreement of the parties.

B. Each year the parties shall meet to review the terms of this Agreement to determine whether it shall be amended.

This Agreement shall become effective as of the first day of 1981 and shall remain in effect from year to year subject to any amendments agreed to by the parties.

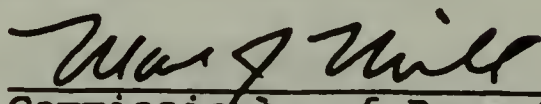
SIGNED:

For the Department of Education


Commissioner of Department of
Education

6/19/81
Date

For the Department of Mental
Health


Commissioner of Department
Mental Health

7/1/81
Date

MEMORANDUM OF UNDERSTANDING BETWEEN
THE DEPARTMENT OF EDUCATION AND
THE DEPARTMENT OF SOCIAL SERVICES

INTRODUCTION

Since the "Inter-Agency Agreement on the Clarification of Responsibility for Children in the Custody of Human Services Agencies" (Inter-Agency Agreement) was first signed on May 1, 1976, a number of issues have arisen which require further clarification. In recognition of this Agreement and the shared mandate of the Departments of Education and Social Services to serve children of the Commonwealth, this Memorandum of Understanding reflects the renewed efforts of both agencies to work together and to resolve outstanding issues. The following agreements have been reached.

I. Cost Sharing Agreements

Whenever a school district and the Department of Social Services agree to a cost sharing arrangement under the Inter-Agency Agreement and 110 CMR § 5.06(2) of the DSS regulations, the following rules shall apply:

- (1) For placements at residential schools which have both a day rate and a residential rate established by the Rate Setting Commission, the school district shall be responsible to pay the day rate and DSS shall be responsible

to pay the difference between the day rate and the full residential/educational rate;

- (2) For placements at residential schools which do not have a day rate established by the Rate Setting Commission, the cost of the placement shall be shared on a 50/50 basis between the school district and DSS.

II. Representation of Children in DSS Care or Custody

The Department of Education reaffirms that DSS social workers may represent children in their care or custody in all stages of the special education process. For those DSS children who are deemed to be in need of an Educational Advocate, DSS will continue to work cooperatively with DOE to assure that adequate representation is obtained according to the guidelines set forth in the DSS/DOE Educational Advocate Agreement.

III. Training

The Departments of Education and Social Services will develop a joint training effort for DSS staff in the Chapter 766 special education process which will include referral procedures, evaluation, educational plan development, and appeals. The Departments of Education and Social Services will also develop a joint training effort for school district staff relative to the access to and delivery of DSS services.

IV. Data Collection

The Departments of Education and Social Services agree to distribute to 766 approved residential schools, which serve DSS consumers, a questionnaire regarding the educational status of the consumers. This questionnaire will be distributed and the data collated by the Massachusetts Association of Approved Private Schools.

V. Analysis of Rate Setting Commission Criteria

The Department of Education and the Department of Social Services will work with the Rate Setting Commission to analyze the cost allocations utilized in the determination of day rates. The analysis will be shared for purposes of establishing criteria for care/support services and educational/instructional services for cost-shared students.

CONCLUSION

The Department of Education and the Department of Social Services share a mandate to provide services to children of the Commonwealth of Massachusetts. To respond to those mandates, the respective Departments agree to maintain communications on issues necessary to appropriate programming for children and to assure that program or fiscal decisions

which may affect the other agency will be discussed in advance.

John H. Lawson

Dr. John H. Lawson
Commissioner
Department of Education

Mari A. Matava

Mari A. Matava
Commissioner
Department of Social Services

DATE: May 16, 1983

DATE: May 6, 1983

Inter-Agency Agreement on the Clarification
of Responsibilities for Children in
the Custody of the Human Service Agencies

In order to facilitate more immediate and adequate service delivery to a small, circumscribed group of children, the Human Service Agencies and the Department of Education have agreed to the following interim agreement:

1. This agreement shall apply only to those children in the custody of a Human Service Agency. Therefore, the agency with guardianship acts as the child's parent.

2. After an intake evaluation by the appropriate Human Service agency and a CORE evaluation by the LEA of residence:

a. When a child clearly requires a residential placement as the result of the evaluation mentioned above, because both a less-restrictive community based educational resource and community based residential resource does not currently exist the LEA will pay the education/instructional cost component of such residential placement and the Human Services agency will pay the care and support cost component of said placement, until such time as one of the agencies can develop a less-restrictive community based educational or residential resource. The Rate Setting Commission will establish appropriate education/instructional and care and support rates.

b. When the LEA has an adequate community based educational program for a child but there exists no adequate community based residential resource, the full cost of both education/instruction and care and support components of a residential placement will be borne by the Human Service agency.

c. When the Human Service agency has an adequate community based residential resource for a child but there exists no adequate community based educational pro-

gram, the full cost of both education/ instruction and care and support components of a residential placement will be borne by the LEA.

- d. Agreement made under 2 a-c must be reviewed when either the Human Services agency or the LEA feels a less restrictive alternative is available and will in no case remain in force for more than one school year. Such review may result in reassignment of responsibility.

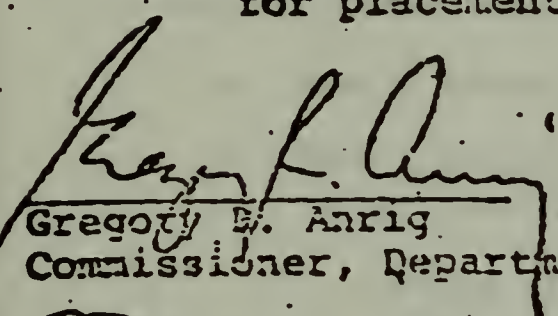
3. In those cases where the Human Services agency acting as the child's parent disagrees with the adequacy of the proposed educational plan, the Human Services agency, acting as the child's parent under section 111.0 of the 766 Regulations, may appeal the plan. Prior to the appeal being heard, the Chairperson of the appropriate Interdepartmental Team and the Team member from the Department of Education (Division of Special Education) will meet with the appropriate Human Service agency who is acting as the parent and with the LEA for the purpose of attempting to negotiate a solution prior to the hearing. A report of this negotiation process will be forwarded to the Bureau of Special Education Appeals.

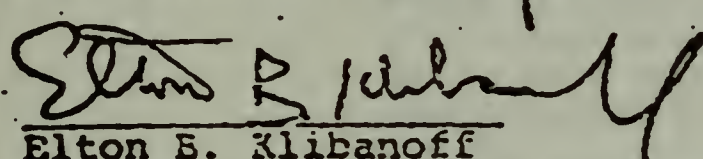
4. Every effort should be made to see that children covered by this agreement receive COPE evaluations as quickly as possible. Similarly, children referred by LEAs for evaluations by or service from Human Services agencies will be seen for intake and evaluation as soon as possible by the appropriate Human Service agency.

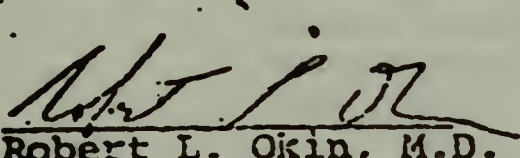
5. All children covered by any formal or informal agreement between an LEA and a Human Service agency on or before the effective date of this agreement will be "grandfathered", that is to say, the prior agreement will continue in force and will not be superseded by this agreement.

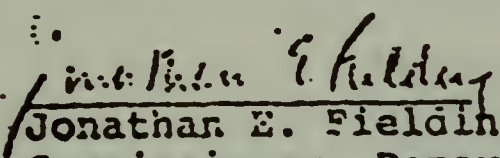
6. The EORS/DE Inter-Agency Discussion Group shall explore ways to make more definite, by regulation or statute, the respective responsibilities of Human Services Agencies and local education agencies in order to effectively serve all children needing special education services. The Inter-Agency Discussion Group shall in addition evaluate the effects of this agreement for review prior to June 1, 1977.

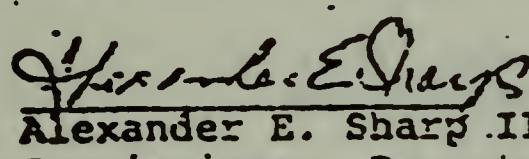
7. Whenever this agreement is used to facilitate the provision of service to a child, the appropriate Human Services agency shall, within thirty days, notify that agency's representative to the ECMS/ED Inter-Agency Discussion Group.
8. The effective date of this agreement shall be May 1, 1976, for placements to begin July 1, 1976.


Gregory E. Anrig
Commissioner, Department of Education

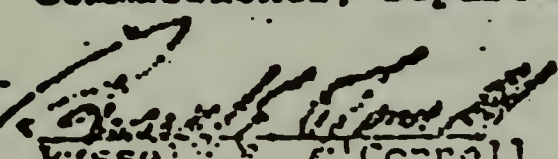

Elton B. Klibanoff
Director, Office for Children


Robert L. Okin, M.D.
Commissioner, Department of Mental Health


Jonathan E. Fielding, M.D.
Commissioner, Department of Public Health


Alexander E. Sharp II
Commissioner, Department of Public Welfare


John A. Calkoun
Commissioner, Department of Youth Services


Russell E. E. Connell
Commissioner, Massachusetts Rehabilitation
Commission

AGREEMENT BETWEEN THE DEPARTMENT OF EDUCATION,
DIVISION OF SPECIAL EDUCATION, AND
THE EXECUTIVE OFFICE OF HUMAN SERVICES

WHEREAS, The Massachusetts Department of Education (DOE), through the Division of Special Education and the Executive Office of Human Services (EOHS), are mutually committed to the implementation of Chapter 688 of the Acts of 1983; and WHEREAS, DOE AND EOHS have jointly developed a process that facilitates a two year planned transition from special education services into adult services for severely disabled individuals in need of continued services upon termination of their special education entitlement; and WHEREAS, the collaboration between local school districts and human service agencies is the basis of the new system;

THEREFORE, This Agreement is entered into between DOE and EOHS to ensure that the system developed is implemented by local school districts and human service agencies through their mutual participation in the cooperatively designed process.

1. It is hereby agreed that the Executive Office of Human Services through the Bureau of Transitional Planning (BTP) shall:
 - a. Keep a record of all C. 688 referrals made by local school districts.
 - b. Report monthly to the Division of Special Education the following information regarding C. 688 referrals:
 1. number of referrals;
 2. local school districts making referrals;
 3. transitional agency designation;
 4. identification of any problems that arise regarding the referral process.
 - c. Monitor human services area offices regarding timely processing and appropriate case management as outlined in the C. 688 guidelines and regulations.
 - d. Inform local school districts and students/parents regarding the following C. 688 events as they occur:
 1. designation of transitional agency;
 2. eligibility for C. 688;
 3. approval or disapproval of the Individual Transitional Plan;
 4. client rights to appeal eligibility determination and the ITP.
 - e. Clarify agency responsibilities including: eligibility, service provision and termination of services. Specifically EOHS shall:
 1. document service gaps created by human services agency mandates, policies or practices;
 2. document service needs for unserved and underserved severely disabled groups and individuals;
 3. resolve problems which arise regarding human service agency mandates on both an aggregate level through the Transitional Advisory Committee and on an individual client level through the Bureau of Transitional Planning.

II. It is further agreed that Department of Education through its Division of Special Education shall:

- a. Monitor the C. 688 referral process by local school districts through its usual program audit and review processes. Specifically, DOE shall monitor:
 1. that LEAs use the approved C. 688 referral form to initiate referrals to the appropriate human service agency or the Bureau of Transitional Planning and that a copy of the referral form is sent to the BTP;
 2. that the appropriate, legal signature is on the referral form to provide consent to proceed with the C. 688 process and the release of appropriate information.
 3. that assessments performed as part of the C. 766 three year re-evaluation and an annual review are made available to the human services agency designated as the C. 688 Transitional Agency when their release is authorized;
 4. local school districts that have not made C. 688 referrals.
- b. Investigate reports of non-compliance of local school districts to conform with the C. 688 referral process.

III. It is further agreed that EOHS and DOE shall jointly:

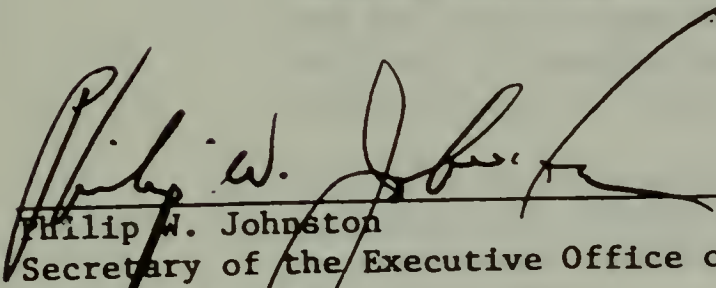
- a. Share assessment data in determining student eligibility and service needs:
 1. local school districts shall be responsible for arranging or performing all assessments regulated under G.L. c. 71B. They will forward all of these assessments with the completed C. 688 referral form to the appropriate human service agency, of the BTP.
 2. the C. 688 Eligibility Unit at MRC shall be responsible for arranging or performing any assessments or special examinations necessary to determine a referred student's eligibility for C. 688 transitional planning. This shall include arranging and paying for transportation needed by the student/client to complete such assessments. These additional assessments shall be made available to the local school district and human service agencies for program planning upon request.
 3. human service agencies shall be responsible for performing or contracting for any additional assessments needed to determine the student's eligibility for agency services or determination of service needs for developing the Individual Transitional Plan. Those assessments shall be made available to other human service agencies, the local school district, or the C. 688 Eligibility Unit at MRC upon request.
- b. Encourage participation of staff in planning and program development for severely disabled students/clients through the development of a collaborative Individualized Education Plan (IEP) and Individualized Transitional Plan (ITP).

The following procedure is recommended to achieve such coordination:

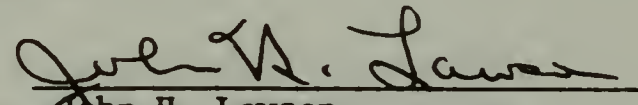
1. Upon the determination that a student is eligible for C. 688 transitional planning, the local school district responsible for the IEP and the human service transitional agency responsible for developing the ITP shall convene a joint meeting at least one year prior to the termination of C. 766 funding for the purpose of transitional planning.
 - a. This meeting shall satisfy the requirements of C. 766 for an annual review or three year re-evaluation. It shall also satisfy the requirements of C. 688 for an interagency transitional planning meeting.
 - b. The local school district will be responsible for inviting all school and education personnel required under C. 766. The human service transitional agency will be responsible for inviting all appropriate human service agencies as required under C. 688. Both the local school district and the human service transitional agency are responsible for notifying the student and his/her family prior to the joint meeting.
 - c. The joint meeting shall result in the development of two documents: the Individual Educational Plan and the Individual Transitional Plan. These plans will be developed to meet the requirements and specifications of the regulations governing each plan.

II. Provide ongoing training of staff on central, regional and local levels.

- a. The Executive Office of Human Services and the Department of Education will both assess staff training needs annually. They will develop training materials to meet the needs of their own agencies' personnel and develop training schedules to address the personnel needs.


Philip W. Johnston
Secretary of the Executive Office of
Human Services

8/15/85
Date


John H. Lawson
Commissioner of the
Department of Education

8/22/85
Date

AGREEMENT BETWEEN THE DEPARTMENT OF EDUCATION
AND THE DEPARTMENT OF PUBLIC HEALTH
REGARDING PEDIATRIC NURSING HOMES

WHEREAS: The Department of Public Health (hereafter DPH) through its Medical Review Team determines the medical eligibility and approves patient care plans of persons residing in Pediatric Nursing Homes (hereinafter PNH's) licensed by the Department of Public Health pursuant to G.L. c.111.

WHEREAS: The Department of Education (hereafter DOE) has statutory responsibility for assuring the provision of special education to special needs children residing in PNH's, pursuant to G.L. c.71B and P.L. 94-142.

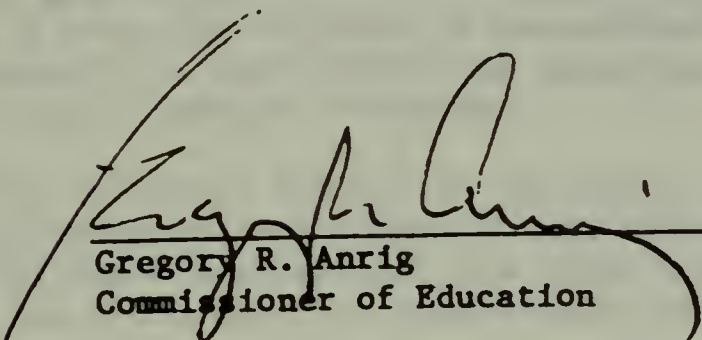
WHEREAS: The School Committees, under G.L. c.71B, are responsible for providing special education services to their respective special needs students residing in PNH's.

Now therefore, it is agreed as follows:

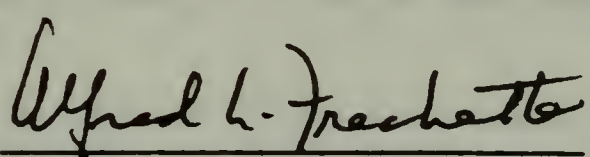
1. The DPH has authority to certify children for residential care in PNH's based on on-going medical needs. The licensed PNH's are Bay State Rehabilitation Center, Mayflower House Child Care Center, Monrath Pediatric Nursing Home, and Northampton Nursing Home.
2. The DPH will assume the responsibility for helping to secure the delivery of appropriate services for children from birth to three (3) years of age who are residing in PNH's.
3. DPH will be responsible for establishing criteria for evaluating and assessing educational programs and services being delivered to individual children and groups of children age birth to three (3) years.
4. The DOE will be responsible for establishing criteria for evaluating and assessing educational programs and services being delivered to individual special needs children and groups of special needs children age three (3) through twenty-one (21) years.
5. The DOE will be responsible for carrying out the monitoring of educational programs provided to children placed in PNH's on an annual basis and for review of individual service plans (hereafter ISP). The monitoring will include:
 - a. review of general educational services to children in PNH's;
 - b. review of individual special education services;

- c. review of individualized educational plans (IEP's);
 - d. verification that special education services are provided by appropriately certified teachers and teachers aids under the direct supervision of appropriately certified teachers, pursuant to DOE regulations;
 - e. evaluation of quality of reporting and monitoring of the progress of individual children.
6. DOE and DPH recognize that each child placed in a PNH who is age three (3) through twenty-one (21), must be referred by the Director of the Nursing Home for a TEAM evaluation, pursuant to the Chapter 766 Regulations, and must be provided with appropriate special education in accordance with the resulting IEP.
7. If alternative programming is needed by a child, the DOE and DPH and any other appropriate agency will arrange a staff meeting and work cooperatively to secure the necessary services for the child.
8. DOE and DPH will provide training and consultation to the directors of the PNH's in accessing third party payments, when available, from private insurance, SSI, and/or medicaid for restorative therapies, above and beyond those included in the per diem rate established by the Rate Setting Commission for the PNH's.
9. DOE and DPH will evaluate this agreement annually. Needed modifications or amendments will be made upon mutual agreement between the appropriate representatives of the two agencies.

This agreement entered into this 28th day of May 1981,
by:



Gregory R. Anrig
Commissioner of Education



Alfred L. Frechette
Commissioner of Public Health



The Commonwealth of Massachusetts

Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169

MEMORANDUM

TO: Chairpersons of School Committees
Superintendents
Administrators of Special Education

FROM:  Roger W. Brown
Associate Commissioner

RE: Revised Letter of Agreement

DATE: March 19, 1984

I am pleased to be able to share with you this revised joint letter of agreement between the Department of Education and the Administration for Children, Youth, and Families (ACYF) the Department of Health and Human Services.

The overall purpose of this agreement is to foster and facilitate cooperative efforts between school committees and Head Start programs in providing services to young children with special needs. The original agreement was signed in 1980, and since its dissemination many new and exciting collaborations have been developed i.e. joint preschool screening, collaboration in Department of Education early childhood grant proposals, co-operative classrooms, sharing of space, resources and inservice training.

As of the past September, over 500 three and four year children with special needs are receiving quality special education in Head Start which is not only the least restrictive environment, but cost effective as well. I hope that the dissemination of this revised agreement will stimulate even more cooperative placements, and that efforts to identify and serve 3 and 4 year old children with special needs will continue to grow state wide. Data collected during 1981 suggests that roughly 4.1% of all 3,4,5 year old children in Massachusetts were receiving special education. However, experts in early childhood education estimate that 6% - 12% of this population are in need of special education.

The early childhood specialist in each of our six Regional Education Centers is available for technical assistance around the implementation of this revised agreement. The Early Childhood specialists also offer a wide variety of resources and materials to aid you in the development of early child special education programs.

This Letter of Agreement is an excellent example of the far-reaching, positive results of active, interagency collaboration.

RWB:TS:dsf

JOINT LETTER OF AGREEMENT

THE MASSACHUSETTS DEPARTMENT OF EDUCATION

AND

THE ADMINISTRATION FOR CHILDREN, YOUTH AND FAMILIES

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Re: Placement of Children with Special Needs

in Head Start Programs

To: Massachusetts School Committees and

Head Start Grantees

2. DEFINITIONS

- a. For the purpose of this letter, "special needs child" will refer to a 3, 4, or 5 year old child who is eligible to receive services and/or support under the Massachusetts General Laws, Chapter 71B, commonly known as Chapter 766 of Massachusetts Law.
- b. "Handicapped Child" refers to a child who meets the definitions of the Announcement of Diagnostic Criteria for Reporting Handicapped Children in Head Start (Transmittal Notice 75.11*). There may be children who are covered by Chapter 766 but who do not meet the criteria of the Head Start definition of a handicapped child. This letter will apply even if that child does not qualify as handicapped under TN 75.11.
- c. "TEAM" refers to the group of persons designated in Chapter 766 Regulations Paragraph 311.0 who meet to write an IEP for a child.
- d. "Income Eligible" refers to a child whose family meets the income guidelines established by the Administration for Children, Youth and Families of the Department of Health & Human Services for participation in a Head Start program.

*Available from:

Department of Education/Division of Special Education
1385 Hancock Street., Quincy, MA 02169

or

New England Resource Access Project
Education Development Center
55 Chapel Street
Newton, MA 02160

I. PURPOSE

The overall purpose of this joint letter is to foster and facilitate cooperative efforts between School Committees and Head Start programs (funded through the Administration for Children, Youth and Families), in their respective efforts to serve young children with special needs. This letter defines areas where agency mandates clearly call for cooperation and clarifies areas where cooperation might seem more problematic. It is intended as a step in the process of providing comprehensive and appropriate services to young children with special needs in the least restrictive environment, as required by Head Start policy and Chapter 766.

This is a revised agreement which builds on the success of the original letter of agreement executed in June 1980.

A more specific goal is to encourage the use of Head Start programs as integrated placements for three and four year old children with special needs served by the School Committees.

4. ANNUAL REVIEW

The Administration of Children, Youth and Families and the Massachusetts Department of Education will review this agreement annually. The Administration of Children, Youth and Families will assume responsibility for convening a Review Committee on or by April 1, 1984. This Review Committee will include representatives from the State Department of Education e.g., Associate Commissioner of Special Education. This committee will also include other providers and consumers of Special Education services affected by this agreement. Potential members may include: an Administrator of Special Education, a Head Start Parent, a Superintendent, a Head Start Director or Coordinator, a member of the Resource Access Project, a member of the Head Start State Training Center.

The purpose of this Review Committee is to assess the status and impact of the agreement, and where necessary to develop a revised version reflecting agreed-upon changes. The Administration of Children, Youth and Families and the Massachusetts Department of Education further agree to jointly disseminate the revised agreement as approved on or by the following September 1. The agreement will be sent to the following:

1. All Massachusetts Head Start programs. At least three copies will be sent to each program and addressed to the Chairperson of the Policy Council, the Director, and the Handicap Services Coordinator.
2. All Massachusetts School Committees. At least four copies will be sent to each School Committee and addressed to the Superintendent, the Administrator of Special Education, the Chairperson of the School Committee and Secretary of the School Committee.
3. Office for Children. Copies will be sent and addressed to the Director, each Regional Director, and each Area Representative.

3. IMPLEMENTATION

- a. This letter is intended to set the framework for cooperation between Head Start programs and School Committees. The specific areas of cooperation should be negotiated locally within its context and within the context of existing policies. School Committees and Head Start Grantees are also encouraged to enter into agreements which are beyond the scope of this joint letter. For example, agreements at the local level can and should cover cooperation on such matters as a child count, screening activities, shared placements, and information sharing.
- b. School Committees and Head Start programs are encouraged to develop written agreements to increase cooperative efforts. The Regional Early Childhood Specialists of The Massachusetts Division of Special Education, and resources available through New England Resource Access Project should be utilized for liaison and negotiating purposes.
- c. The staff of Head Start programs serving special needs children in cooperation with School Committees are eligible to participate in in-service training provided by the State Department of Education.

4. Massachusetts Advocacy Center. One copy will be sent to the Director.
5. Massachusetts Federation of Children with Special Needs. One copy will be sent to the Director.

The State Department of Education will assume responsibility for the dissemination of the agreement to the agencies and persons identified in number 2 above. The Administration of Children, Youth and Families will assume similar responsibility for all others listed above. Both parties agree to distribute this agreement annually to other interested agencies and individuals.

5. IDENTIFICATION AND SCREENING

- a. Under Head Start Performance Standards, if a child in a Head Start program is identified as having special needs, the program has the obligation to inform parents of their right to refer their child to the local School Committee to be evaluated under Chapter 766 and to encourage the parents to make the referral. In addition, the Head Start program should provide whatever support is necessary and appropriate to assist the parents in making this referral.
- b. Local School Committees and Head Start programs should develop joint screening programs for three and four year old children in order to maximize community resources.
- c. Local School Committees should utilize Head Start programs in their efforts to communicate with parents concerning services available to young children with special needs. These efforts might include having jointly sponsored parent workshops and utilizing existing Head Start parent organizations and meetings.
- d. Children identified and served by both Head Start and School Committees may be counted by both agencies for reporting purposes. Since Head Start rules require a categorical diagnosis for reporting purposes, while 766 rules do not, Head Start may (with parental consent) have a qualified mental health or health consultant review the Individualized Education Plan (IEP), and if necessary the evaluation TEAM records to interpret whether a given child falls within the Head Start reporting criteria.

6. EVALUATION

- a. If a child is referred for a team evaluation who has recently attended a Head Start program, the local School Committee shall contact the program for information before beginning the formal evaluation as required by Paragraph 307.3 of 766 Regulations. This sharing of information can take place only with parental permission.
- b. If the Head Start program has been involved in obtaining diagnostic evaluations on a particular child prior to, or concurrently with, the TEAM evaluation process, these reports shall be included in the consideration of the evaluation TEAM with parental permission. Where appropriate, properly executed diagnostic work, initiated by either the parents or the Head Start program may, with parental permission, replace parts of the TEAM evaluation.
- c. If a child is enrolled in a Head Start program at the time of the TEAM evaluation, his or her teacher(s) shall be a member of the TEAM which develops the IEP (Paragraph 311.5 of the 766 Regulations).

7. SERVICE DELIVERY

- a. A Head Start program should be considered as a possible placement when it is determined that a child would benefit from an integrated/mainstreamed placement.
- b. Children placed in Head Start programs are to be reported under the prototype 502.8 (b) of the Chapter 766 Regulations.
- c. In order to serve special needs children, Head Start programs must obtain a special needs license from the Office for Children.
- d. If a Head Start program is recommended as a placement for a child, negotiations between the special education administrator of the local School Committee recommending the placement and the program shall take place to determine if the Head Start program will accept the placement and IEP conditions. When an IEP is provided for a Head Start child, the Head Start program will be identified as a placement in the service delivery section of the IEP.
- e. When a TEAM evaluation results in the placement of a child in a Head Start program, the resulting IEP shall delineate all educational objectives and services, including those which will be provided within the Head Start program and those which will be provided by the School Committee. Whenever placement in a Head Start program is determined to be the most appropriate, Head Start and School Committee personnel shall be included in all future follow-up meetings.
- f. Any related services to be provided by the School Committee should be delivered at a Head Start site.

8. LOGISTICAL AND FISCAL ARRANGEMENTS

- a. If a child with special needs is already enrolled, or will be enrolled, in the Head Start program (whether low income, or over income pursuant to exercise of the overincome 10% option), the Head Start grantee shall provide the educational program, and all other services it provides to other children, to the special needs child free of charge. The School Committee shall assume fiscal responsibility for services not available through the Head Start program. These costs and obligations should clearly be assigned by and stated in the IEP.
- b. If there are no openings for children in the Head Start program, or if the program does not choose to serve overincome children but the program is nonetheless willing to accept additional children (over its funded enrollment), the grantee may charge the school committee a tuition for the attendance of the child in Head Start. This fee should take into account basic Head Start expenses (current average per child cost) and additional costs of services needed as a result of the child's special needs. These fiscal arrangements, which should be negotiated locally, must conform to Head Start/Health and Human Services policies, including those governing program income. Tuition-paying children cannot be included in the Head Start program's count for any purpose, including the 10% Handicap Mandate.
- c. When the IEP requires only specialized service for a special needs child enrolled in a Head Start program, the prototype for this placement is 502.8,* and the School Committee under General Laws, Chapter 70 Section 2A, may claim the child.
- d. The Head Start program shall provide transportation when it is possible and appropriate under the existing transportation system. The school committee shall be responsible if transportation arrangements required for the special needs child are different from those provided other children. (See section 900 of the 766 Regulations.)
Responsibility for the transportation must be specified in the IEP.

*except for 5 year olds where the prototype should be 502.4i

- e. Every effort will be made to assist in the access of third party payment for certain medically necessary services under conditions of General Laws Chapter 71B, section 5, as amended by Acts of 1982.

9. COST SHARING PROCEDURES

The Administration for Children, Youth and Families and the Massachusetts Department of Education agree that Head Start programs are responsible for providing the basic Head Start components to all handicapped children enrolled.

Head Start is a comprehensive child development and family program which offers early childhood education, social services, health and nutrition support and education to families, and mental health services. A major component of all Head Starts is Parent Involvement; all parents have decision making and policy setting roles through the Policy Council and are involved in determining the services that their children receive while in Head Start.

After conducting a community needs assessment, many Head Start programs elect to offer a Home-Based program. Families enrolled in this Head Start option receive all Head Start services outlined above. However, the services are primarily provided in the home on at least a weekly basis. Many handicapped preschoolers and their families can benefit from a Head Start Home-Based program either as the major service or in a combination with other center-based programs. It is a viable option that School Committees should consider.

However, children who have been evaluated and/or placed through the TEAM process often require additional special services beyond the basic Head Start program and beyond Head Starts' Program Account 26* capability. Whenever appropriate, the Administration for Children, Youth and Families and The Department of Education encourage that the individual Head Start agencies and School Committees collaborate and pool resources to establish cost effective, least restrictive environments within their communities.

*PA 26 refers to the program account used to support and fund the Handicap Effort in Head Start.

We suggest the following procedure for cost sharing between Head Starts and School Committees. The term School Committee is used in this agreement to include administrative functions of a school district or Local Education Agency (LEA). It is recognized that when Head Start programs discuss any of the following cost sharing procedures, the negotiations will take place with the staff in the administrative unit under special education or the office of the superintendent.

1. School Committees can pay a Head Start program to purchase additional services required by a child's IEP. These purchase of service agreements can include the full range of support services e.g., transportation, materials, physical therapist, classroom aide.
2. A School Committee can purchase the above services directly and supervise the delivery of service in cooperation with the Head Start program's staff.

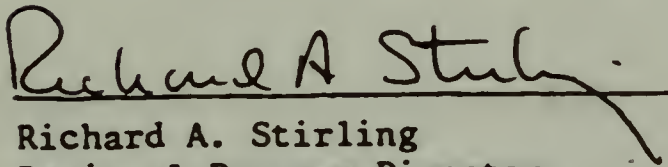
In either case, School Committees will provide support services within the Head Start classroom as stated in the child's IEP.

Possible cost sharing arrangements which maximize optimum mainstreaming opportunities include:

1. A school district may mainstream where appropriate all of its handicapped preschoolers at a Head Start program site. In this case, the School Committee could provide a special education teacher and other appropriate support staff who work with Head Start staff to provide a total program in one location in a cost effective way.
2. Head Starts' limited PA 26 funds may only be able to provide a portion of the cost of the services to a particular child required by the child's IEP. In this case the School Committee must share or supplement the cost of the service. For example, the School Committee could add to the hours of a service provider.

We hope that with the encouragement of this letter, the policy interpretation and suggested procedures that it provides, that School Committees and Head Start Grantees find new areas of cooperative undertaking to provide the best quality services to special needs preschool children in Massachusetts.

Sincerely,



Richard A. Stirling
Regional Program Director
Administration for Children,
Youth and Families
Department of Health and
Human Services



John H. Lawson
Commissioner
Massachusetts Department
of Education

Interim Interagency Agreement between
the Department of Education and
the Office for Children

Whereas: The Department of Education ("Department") is responsible for approving private schools that provide publicly funded special education services pursuant to M.G.L. c.71b, s. 10; and

M.G.L. c.28A §10 authorizes the Office for Children, hereinafter "Office", to issue and renew licenses to persons who operate a day care center, placement agency or group care facility in the Commonwealth as defined by M.G.L. c.28A s.9; and

Whereas: M.G.L. c.28A §11 (a) prohibits the operation of a day care center, placement agency or group care facility in the Commonwealth without approval from the Office.

The Department and the Office agree to:

- exchange of information concerning complaints relating to health and safety conditions in a school, prior to a final report, including serious injury or death of a student.
- participation of authorized Office and Department field staff in approval and licensing studies respectively.
- to jointly develop criteria for the coordination of investigations relative to complaints.

To share written reports of monitoring, approval and licensing visits.

That the Office will review and revise 102 C.M.R. 3.00 et seq. by June 30, 1985, and that the Department will review and revise as needed 603 C.M.R.18.00.

To share approval visit and licensing study schedules six months in advance.

That the Department will consider granting authority to monitor health and safety standards to OFC under revised 102 C.M.R. 3.00.

The duration of this agreement is one year beginning July 15, 1984 and ending July 15, 1985.

(DOE)

John W. Lawrence

(Date)

8/29/84

(OFC)

Gloria J. Clark

(Date)

8/22/84

MEMORANDUM OF UNDERSTANDING

REGARDING PRIVATE SPECIAL EDUCATION SCHOOLS

The Executive Office of Human Services and the Department of Education hereby state their intention to develop interagency agreements pursuant to 603 C.M.R. 18.00 et seq. in regard to:

1. Coordinating 603 C.M.R. 18.00 standards and procedures with Office for Children licensing authority pursuant to M.G.L. Ch. 28A, s 9 and 11. Pending development of this agreement, the OFC and DOE will agree to coordinate procedures as outlined in the attached interagency agreement between the Department of Education and the Office for Children.
2. Developing with respective human service agencies procedures for assuring continuity of services for students for whom there is mutual responsibility in cases of proposed suspension, transfer, termination, closing of intake, or revocation of program approval and subject to M.G.L. Ch. 71B Sections 12A-C (C.688) and 603 C.M.R. 28.00, termination of eligibility for special education services.
3. Developing with respective human service agencies procedures for implementing continuity of services for students past the age of twenty-two, subject to the provisions of Chapter 71B §§. 12A-C and 603 C.M.R. 28.00.
4. Developing a coordinated planning process with appropriate agencies when it is known that a private school is experiencing difficulties and may be likely to close.
5. An interagency task force, chaired jointly by the Executive Office of Human Services and the Department of Education will develop integrated procedures regarding health, safety and programming in approved private special education schools. The task force will include designees at the policy management level for the director and commissioners of the following agencies: Executive Office of Human Services, Department of Education, Office for Children. This task force will consult with the existing task force on private special education schools chaired by the Department of Education which has representatives of private school providers, parents, public school administrators and human service agencies.
6. The task force will complete an interim report on its proceedings and recommendation, including interagency agreements by April 1, 1985.
7. (These agreements will be effective no later than one year following the effective date of this memorandum.)

(EOHS)

(DATE)

(DOE)

(DATE)

Philip W. Johnson
August 28, 1984

John V. Lannon
August 28, 1984

AGREEMENT BETWEEN THE
MASSACHUSETTS COMMISSION FOR THE BLIND
AND

THE MASSACHUSETTS DEPARTMENT OF EDUCATION, DIVISION OF SPECIAL EDUCATION
REGARDING SERVICES FOR LEGALLY BLIND AND
VISUALLY HANDICAPPED CHILDREN

1. Purpose

The Massachusetts Department of Education (MDE), through the Division of Special Education and the Massachusetts Commission for the Blind (MCB) are mutually committed to the statewide expansion and improvement of services for legally blind and visually handicapped children. We agree that our purpose can be achieved through coordinated planning, resource sharing and staff training.

2. Definition

For the purposes of this agreement, the term child or children shall have the following meanings:

- A. For the MCB - persons between the ages of 0-21 years who are legally blind, and;
- B. For the MDE - any persons of ages 3-21, who have not obtained a high school diploma or its equivalent and who have an organic visual impairment such that there is no vision, or visual limitation which after best possible correction, results in educational handicaps.

3. Statements of Joint Responsibility - Massachusetts Department of Education/
Massachusetts Commission for the Blind

- A. Serve as advocates for the formation and implementation of state plans, appropriate laws, regulations, and program standards affecting the educational well-being of such children;
- B. Design and administer systematic child search plans which will mutually identify children needing specialized educational services;
- C. Serve as advocates for the development and maintenance of comprehensive delivery systems for specialized educational materials and equipment to support children in the least restrictive settings;
- D. Assure that appropriate related services are provided as necessary within the special education delivery systems;

- E. Design and administer public communication systems which will clearly describe all programs and services potentially necessary for children to receive a free, appropriate, public education;
- F. Foster interagency, intra-agency, and medical community cooperation to insure the effective provision of other necessary social, vocational, rehabilitation, medical, and welfare services to children in concert with the total educational system;
- G. Serve as catalysts for the intra and interagency development and implementation of inservice training opportunities for agency staff and local professional staff working with children, and;
- H. Upon request, serve on the Interdepartmental Children's Project Team, as set forth under Chapter 766.

4. Statements of Massachusetts Department of Education Responsibility through the Division of Special Education

- A. Analyze census data in order to recommend and enforce the establishment of a continuum of appropriate program models to serve all identified children, regardless of the educational level or geographic location;
- B. Assure that adequate federal, state, and local funding programs are provided to support state-wide special education delivery systems;
- C. Serve as consultants to local school district personnel as they conduct appropriately designed program evaluation and improvement practices;
- D. Provide leadership to teachers in local and regional education programs and to function as consultants to them and local administrators;
- E. Provide an on-going program of local administrative professional development in order to raise the level of technical expertise for the local supervisors responsible for making important daily programmatic decisions;
- F. Operate a textbook and materials center (Vision Resource Library) for the research, acquisition, maintenance and distribution of specialized materials and equipment to meet the needs of children of less than college level enrolled in public and private non-profit schools;
- G. Serve as consultants to Human Service Agency personnel, local school district personnel, parents and the public on matters relating to education, and;
- H. Provide the services of mediators and hearing officers for the resolution of disputes arising out of rejected education plans (I.E.P.'s).

5. Statement of Massachusetts Commission for the Blind Responsibility

- A. Provide early intervention in the form of an infant stimulation program to infants as soon as they are referred and/or suggest appropriate referral services. When a child reaches age 2½, referral will be made by the Massachusetts Commission for the Blind to the local school district for the development of an educational plan;
- B. Provide Activities of Daily Living Skills (ADL) to children within the home;
- C. Provide staff support and counseling as outlined in Individual Educational Plans/Individual Written Rehabilitation Plans to children and their parents, assisting the child and parents to deal with the problems of legal blindness;
- D. Participate in the Chapter 766 TEAM evaluation process as appropriate;
- E. Establish eligibility and distribute equipment for the Talking Book Machine (TBM) program of the Library of Congress;
- F. Administer Medical Assistance (MA) for children based upon legal blindness and parents' income and resources;
- G. Maintain a Register of all legally blind as established by Massachusetts General Law Chapter 6, Section 135;
- H. Receive referrals for vocational rehabilitation services for children/clients who have attained an employable age. Such services are as follows:
 - a. Determine the client's eligibility for vocational rehabilitation services or extended evaluation services;
 - b. Develop a joint Individualized Educational Plan/Individual Written Rehabilitation Plan with local school districts specifying vocational rehabilitation goals, objectives, service timelines, etc. for the client;
 - c. Specify basic services which the MCB provides to clients while they are still eligible for Chapter 766 Services. These vary to include referral, counseling, guidance, and job placement (not including summer job placement). The Commission may offer orientation and mobility services during the summer months for clients who have received such services from a school district during the school year;
- I. Consult with secondary school educators/vocational educators on planning program components;
- J. Counsel clients who are school dropouts regarding their rights to an education provided by their local school districts, and;

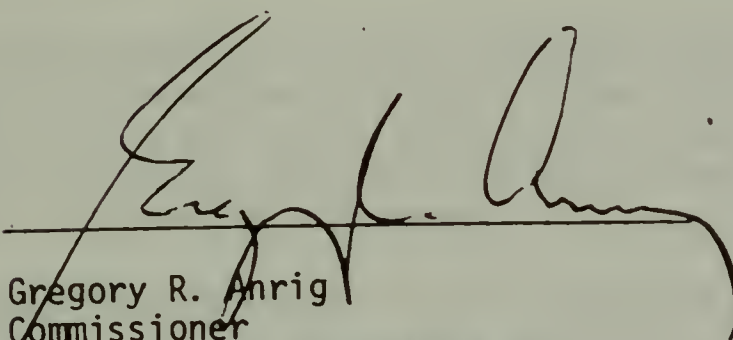
K.. Initiate vocational rehabilitation services for clients of the Commission who are school dropouts and who do not wish to receive educational services from local school districts.

6. Assurances

Both the MDE and the MCB, for the purposes of this agreement, shall abide by established policy, regulation, and legislation relative to confidentiality of student/client records and appeals procedures. Disputes regarding payment for services for individuals will be resolved by the MCB, Assistant Commissioner of Rehabilitation Services or Rehabilitation Programs and the MDE, Division of Special Education Assistant Associate Commissioner.

7. Annual Review

This agreement shall be reviewed annually and shall be revised when necessary through the mutual written agreement of both agencies.



Gregory R. Anrig
Commissioner
Massachusetts Department of
Education



Edward J. McHugh
Commissioner
Massachusetts Commission for the Blind

DATE: _____

6/8/81

DATE: _____

5-29-81

M E M O R A N D U M

TO: Superintendents of Schools and
Special Education Directors

FROM: Roger W. Brown *RWB*
Associate Commissioner

Elmer C. Bartels *ECB*
Commissioner, Massachusetts Rehabilitation Commission

RE: Agreement between the Massachusetts Rehabilitation Commission
and the Department of Education

The intent and purpose of the attached agreement between the Department of Education's Division of Special Education and the Massachusetts Rehabilitation Commission is to formally establish a pathway through which local school district personnel and counselors in area offices of the Commission can work together on behalf of MRC eligible special needs youth when the need for vocational planning and program development is indicated and appropriate.

Our hope is that local school districts will take advantage of the options presented here and seek the services and expertise of the Commission as offered through this agreement.

The development of a joint IEP/IWRP should not add to or increase the cost of the existing procedures for local school district personnel or rehabilitation counselors. Rather, this agreement should allow individual agencies to more effectively and cost efficiently plan for secondary special needs youth in need of vocational and/or occupational programs.

As specifically stated in the agreement, both agencies agree to provide cross-agency training. During the summer and fall of 1980, training will take place on the Regional level and include appropriate staff from both agencies. The goal of this training will be to provide orientation to each agency's legal mandates and policies as they apply to the development of cooperative local service arrangements. During the fall, our Regional staff will conduct meetings with local administrators to further define the potential of Massachusetts Rehabilitation Commission/Special Education collaboration. Additional, specific cross training will take place for local education administrators, counselors, teaching staff and area Commission staff during the late fall of 1980.

MASSACHUSETTS REHABILITATION COMMISSION
AND THE
DEPARTMENT OF EDUCATION, DIVISION OF SPECIAL EDUCATION

A. Purpose:

The Massachusetts Department of Education, through the Division of Special Education and the Massachusetts Rehabilitation Commission are mutually committed to the expansion and improvement of vocational opportunities for handicapped and special needs youth. We agree that our purpose can be achieved through coordinated planning early in a youth's secondary career, resource sharing, and staff training.

B. As Objectives to Accomplish this Goal, the Agencies Agree:

1. To provide a means for shared delivery of services in a timely cost effective manner.
2. To provide a means for joint consultation and service delivery with the individual student/client, family, and appropriate agency staff.
3. To share assessment data in determining student/client eligibility and service needs.
4. To share and encourage participation of staff in planning and program development for handicapped students/clients.
5. To clarify agency responsibilities.
6. To provide cross training of staff on central, regional, and local levels.
7. To participate in specific tasks such as: State and Regional Review Teams, Interdepartmental Childrens' Teams, and State Advisory Boards.
8. To consult jointly on state plans.
9. To work together to assure that professionals serving the disabled are appropriately licensed and/or certified under Commonwealth of Massachusetts laws or by appropriate professional organizations and that facilities and programs utilized are appropriately approved and/or certified by local, state, or national certifying groups.
10. To monitor and implement effectively, legislation concerning handicapped persons.

The Education of All Handicapped Act of 1975, P.L. 94-142, and the Rehabilitation Act of 1973 both mandate the development of appropriate programs individual to the needs of each student/client. The mechanism for special needs students is the Individualized Education Plan, developed when a student is determined to be in need of special education, which outlines an educational goal, program design, and necessary related services to reach that goal.

The Individualized Written Rehabilitation Plan (IWRP) provides a similar function for vocational rehabilitation agencies. The following components are common to both plans:

1. A statement of goals, including short term objectives.
2. A statement of specific services to be provided.
3. Dates of initiation and duration of services.
4. Criteria for evaluation procedures and schedules.

Whereas the IWRP focuses on vocational goals including supportive rehabilitation services, and the IEP on educational goals, which may include occupational education, the Commission and the Division agree that the method for cooperative planning for secondary school youth shall be the collaborative development of an IEP/IWRP.

D. Cooperative Planning and Joint Delivery of Services

The Division of Special Education and the Massachusetts Rehabilitation Commission further agree that handicapped and special needs students' vocational development programs must be stressed when the child begins secondary education and when a vocational goal can be established.

At this time the local school system, school district, or other educational program should contact the area Massachusetts Rehabilitation Office for the purpose of identifying a counselor to participate in the development of the student's IEP. If the IEP reflects a need for a vocational program, the rehabilitation counselor, together with appropriate TEAM members, will collaborate on the development of an IEP/IWRP.

1. The local school system, school-district or education program will:
 - a. Assign a guidance counselor or an appropriate professional for each student referred to the Commission.
 - b. Identify a staff person to coordinate services with the local Commission office.

c. Counsel any child, age 16-21 who has left school or is planning to leave of his rights to educational programs and document these efforts. (Chapter 766, Sec. 207.0).

2. The Rehabilitation Counselor will:

- a. Determine the student's potential eligibility for vocational rehabilitation services or extended evaluation services.
- b. Accept and process the student's application.
- c. Acknowledge receipt of the referral from the local school system or other educational unit within fifteen days.
- d. Develop a joint IEP/IWRP specifying vocational rehabilitation goals, objectives, services, timelines, etc. for the student/client.
- e. Specify basic services which the Massachusetts Rehabilitation Commission provides to eligible clients while they are still eligible for 766 services. They are referral, counseling and guidance, and job placement. Under certain circumstances, in accordance with its regulations, the Commission may provide paid services such as material and equipment which are used outside of the school program, for example; wheelchairs, hearing aids, leg braces, and home modifications.
- f. Consult with secondary special educators/vocational educators on planning program components.
- g. Counsel the client who is a school drop-out as to the right to education and obligation of the school to develop appropriate programs.
- h. Initiate vocational rehabilitation services within the scope of the Commission's program for the handicapped school dropout unwilling to work with the local school system in a Chapter 766 program in conjunction with the Massachusetts Rehabilitation Commission.
- i. Follow up on annual reviews and re-evaluations.

Each agency will continue to identify professional staff at the central level to be responsible for facilitating implementation of this agreement, coordinating cross-agency training activities on the regional and local levels, and tracking, analyzing and disseminating legislative and regulatory changes as they apply to vocational education and training for handicapped and special needs youth.

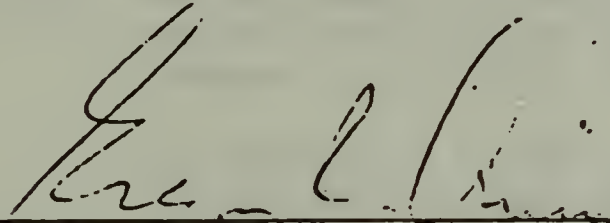
Both the Division and the Commission, for the purposes of this agreement, shall abide by established policy, regulation, and legislation relative to confidentiality of student/client records and appeals procedures.

F. Annual Review

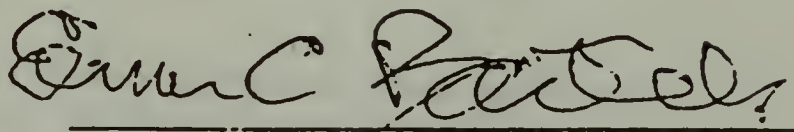
This agreement shall be reviewed annually in the form of a written analysis of the year's activities.

Signature

Signature



Gregory R. Anrig
Commissioner
Massachusetts Department of
Education



Elmer C. Bartels
Commissioner
Massachusetts Rehabilitation
Commission

Date:

January 15, 1980

Date:

2/19/80

INTERAGENCY AGREEMENT

BETWEEN THE

DEPARTMENT OF EDUCATION

AND THE

DEPARTMENT OF SOCIAL SERVICES

Whereas: The Department of Education is responsible for approving private schools that provide publicly funded special education services pursuant to M.G.L. C. 71B, s.10 and

The Department of Social Services purchases services from approved Chapter 766 programs for the placement of children pursuant to M.G.L. C. 18B and M.G.L. C. 119, s.21 et.seq.

The Department of Education and the Department of Social Services hereinafter jointly referred to as "the Departments" agree that:

The Department of Education will provide training to Department of Social Services staff in preparation for their participation in the program audit process of Chapter 766 Approved Private Schools.

The Department of Social Services will provide informational training to Department of Education staff on M.G.L. C. 119, s.51A et.seq. on "Injured Children Reports" regarding reporting procedures. It is understood that the responsibility for administration and investigation of complaints rests solely with the Department of Social Services.

Whenever possible, the Departments will jointly review applications for approval from private schools from which the Department of Social Services purchases services with the understanding that the Department of Education will grant approvals.

The Department of Social Services will participate on program audits of Chapter 766 private schools during the field test phase. (January 1, 1985-June 30, 1985). The Department of Social Services will provide staff from the Central/Regional Office to participate in the program audits of residential schools and regional area staff to participate in the program audits of day schools on a staff available basis.

The Departments will jointly review the Department of Education approval and monitoring procedures during the field test phase to determine if the procedures satisfy the Department of Social Services approval standards for group care facilities.

Upon completion of the review, the Departments shall jointly decide whether or not the Department of Social Services' Group Care Application should be incorporated into the Chapter 766 Private School Approval and Monitoring Process.

The Department of Education will act as principal purchasing agency and will be responsible for conducting all rate negotiations with the approved private schools and the Massachusetts Rate Setting Commission.

In the event that disagreements develop between the Departments, all such disputes shall be mutually resolved by the Associate Commissioner of Special Education of the Department of Education and the Deputy Commissioner of the Department of Social Services.

The Departments will develop a coordinated planning process when it is believed that a private school is experiencing difficulties and may be likely to close.

The Departments will share written reports of monitoring approval visits.

The Departments will inform each other of alleged abuse cases and share written reports of substantiated abuse cases for students enrolled in private schools.

This agreement will be jointly reviewed by the Departments to assess its effectiveness at the end of one year.

For the Department of Education:

For the Department of Social Services:

John H. Lawson
John H. Lawson, Commissioner

March 1, 1985
Date

Marie A. Matava
Marie Matava, Commissioner

April 30, 1985
Date



The Commonwealth of Massachusetts

Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169

Agreement between the Department of Correction and the Department of Education concerning Special Education Teachers and Special Education Diagnosticians.

WHEREAS: Both the Department of Correction and the Department of Education are committed to the implementation of P.L. 94-142;

WHEREAS: Both the Department of Correction and the Department of Education recognize the eligible inmates admitted to the Department of Correction may have special education needs;

NOW THEREFORE, the Department of Correction and the Department of Education agree to the following terms and conditions:

1. The Department of Correction (DOC) is responsible for funding of special education teachers and diagnosticians at mutually agreed upon DOC facilities.
2. The specified special education staff will work with eligible inmates. For purpose of this agreement, an "eligible inmate" is an inmate under the age of 22 who does not have a high school diploma or its equivalent and who has been determined, through the DOC evaluation process, to have special needs.
3. The specified staff shall have appropriate special education certification and will be hired by the DOC Director of Education.
4. The authority to monitor work performance and the authority to recommend the dismissal of staff will be the responsibility of the DOC Director of Education.
5. The specified staff members along with existing Department of Correction education staff, will attempt to insure that:
 - a. each "eligible inmate" who is referred for or requests a special education evaluation shall receive a special education evaluation consistent with applicable state and federal laws and regulations; and
 - b. each "eligible inmate" who is determined to have special needs shall receive special education services (based on an appropriate educational evaluation) consistent with applicable state and federal laws and regulations.
6. The Department of Correction shall be responsible for the ongoing provision of other assessments and other services to "eligible inmates," including, but not limited to:
 - a. psychological,
 - b. medical,
 - c. social.

7. The staff locations shall be as follows:

- a. One and a half full time diagnosticians shall work at the Reception and Diagnostic Unit at the Massachusetts Correctional Institute - Concord. The diagnosticians will be responsible for special education assessments on all "eligible inmates" under 22 as defined by this agreement (see number 2 above).
- b. One full time diagnostician/teacher shall work at the Massachusetts Correctional Institute - Walpole. The diagnostician/teacher shall be responsible for the special education evaluations for and instruction of all "eligible inmates" as defined by this agreement (see number 2 above).
- c. The special education teachers will be assigned to DOC facilities according to the identified needs of the population.
- d. Staff may be reassigned to other DOC sites if deemed necessary by the Director of Education, Department of Correction.

8. All education staff, along with other DOC staff, shall attempt to provide access to special education assessments and special education services (see Section #5) to eligible inmates in the facilities listed below:

- a. Massachusetts Correctional Institute - Framingham
- b. Massachusetts Correctional Institute - Norfolk
- c. Massachusetts Correctional Institute - Walpole
- d. Massachusetts Correctional Institute - Bridgewater
- e. Massachusetts Correctional Institute - North Central Correctional Institute
Gardner
- f. Massachusetts Correctional Institute - Southeastern Correctional Center
- g. Any other facility defined by the Department of Correction, in conjunction with the Department of Education, as either medium or minimum security.

9. The following shall be considered the special education referral process:


- a. If an inmate has been pre-screened at either MCI's Concord, Bridgewater, or Framingham, or has previously been evaluated/assessed at another DOC facility, the inmate shall be referred to the special education teacher by the DOC school principal at any of the above mentioned DOC facilities.
- b. If an inmate leaves the Reception and Diagnostic Center at MCI Concord, Framingham, or Bridgewater prior to the completion of special education assessments, if an inmate enters the Department of Correction system elsewhere, or if an inmate has already passed through the Reception and Diagnostic Center process, either any completed assessments will be made available to the appropriate education staff or documentation of the need and the referral for assessment(s) to be performed by the educational diagnostician or teacher shall occur.

10. Ongoing special education eligibility is defined by the existence of a signed Individualized Education Plan.
11. For purposes of this agreement, the Director of Education of the Department of Correction shall function as the "Special Education Director". As such, the Director of Education (or designee) shall sign all completed Individual Education Plans and shall assure the provision of the special education services contained therein.
12. DOC agrees to implement the attached job descriptions as set forth in the Addenda A and B incorporated herein.
13. All specified staff members are ultimately responsible to the Department of Corrections' Director of Education (or designee) for daily work performance and adherence to the job descriptions set forth in Addenda A and B incorporated herein.
14. A reporting system will be developed by the Director of Education, Department of Correction, and the Director, Bureau of Institutional Schools, Department of Education. This system will be used by all specified staff to communicate regularly with appropriate staff in the Department of Correction and in the Division of Special Education.
15. The DOC Director of Education and the Department of Education, Division of Special Education through its Bureau of Institutional Schools' Director (or designee) shall meet quarterly to evaluate the special education program.
16. The Department of Education, Division of Special Education through its Bureau of Institutional Schools Director (or designee) shall monitor the programs through semi-annual site visits; the monitoring shall consist of classroom observations, review of student records/documents (pending "CORI" clearance) and review of DOC monthly statistical reports.
17. The Department of Education recognizes and accepts that security constraints may take precedence over efforts to deliver special education services in the least restrictive environment.
18. The Department of Correction recognizes and accepts the monitoring responsibilities of the Department of Education with respect to the mandates of P.L. 94-142 and the monitoring of the job responsibilities set forth in the addenda and incorporated herein.
19. This agreement will be re-negotiated by the parties hereto on an annual basis.

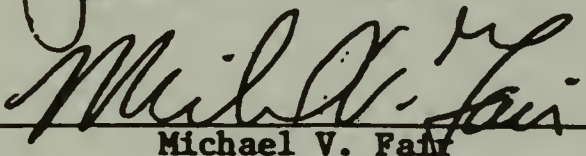
SIGNED:

DATE: January 8, 1985

DATE: 2-5-85



John H. Lawson
Commissioner of Education



Michael V. Fair
Commissioner, Department of Correction

ADDENDUM B

Job Description

SPECIAL EDUCATION TEACHERS

1. The special education teacher shall deliver special education services based on the Individual Educational Plan developed by either the diagnostician or teachers at MCI's Concord, Bridgewater or Framingham or special education staff at the inmates current MCI facility.
2. They shall work closely with Department of Correction staff to integrate the delivery of special education services into the existing education programs.
3. They shall communicate regularly to other education staff who may be delivering other educational services to individual inmates.
4. They shall document regularly the amount and kind of special education services being delivered.

ADDENDUM A

Job Description

SPECIAL EDUCATION DIAGNOSTICIANS

1. As part of the classification process at MCI's Bridgewater, Concord and Framingham the diagnosticians shall provide special education assessments to "eligible inmates" as defined by this agreement. (See number 2 of the attached Interagency Agreement)
2. They shall integrate such assessments into the classification process.
3. They shall use appropriate diagnostic methods to determine an eligible inmate's educational level including both strengths and weaknesses.
4. They shall develop an individual education plan for any inmate so assessed who wishes to receive special education services available within the Department of Correction.
5. They shall participate where appropriate in classification hearings for eligible inmates for whom they have completed a special education assessment.

Agreement between the Department of Education's Division of Special Education through the Bureau of Institutional Schools (B.I.S.) and the Department of Youth Services (D.Y.S.) to provide for the special education needs of youth who reside in the secure facilities of the Department of Youth Services.

WHEREAS: The Department of Education (D.O.E.) has the statutory responsibility to insure that a free and appropriate public education is available to all special needs children in the Commonwealth from age three (3) until their twenty-second (22) birthday regardless of race, sex, religion, ethnic origin and/or physical and mental handicap pursuant to M.G.L. 71B.

WHEREAS: The Department of Youth Services (D.Y.S.) has the statutory responsibility to provide a full range of social services to its clients who reside in secure facilities, as well as to provide, or arrange for the provision of education to all appropriate youth pursuant to M.G.L. 18A Section 2.

IT IS AGREED THAT:

1. Both agencies recognize the need to meet the educational needs of all youth who reside in the Department of Youth Services' secure facilities. The Bureau of Institutional Schools is responsible for the provision of the special education needs of these youth, and the Department of Youth Services is responsible for the provision of a full range of socio-educational services to these youth.
2. Both agencies will establish an integrated system for the delivery of education and social services to youth consistent with completed Individualized Education Plans (I.E.P.'s) pursuant to G.L.C. 71B and P.L. 94-142 as well as Chapter 18A and all applicable regulations.
3. Both agencies will work cooperatively to develop a comprehensive educational policy and integrate it into the Department of Youth Services' case management system and the Bureau of Institutional Schools' Evaluation Team Liaison (E.T.L.) system.
4. Both agencies will work cooperatively through the B.I.S. Central and District Offices and the D.Y.S. Central and Regional Offices to:
 - (a) Share existing evaluation and assessment resources which are standardized and agreed upon for a statewide delivery of special education services.
 - (b) Develop the necessary services to meet the assessed special educational needs of all D.Y.S. youth who reside in secure facilities, consistent with their Individualized Education Plans (I.E.P.'s) or their referrals for I.E.P.'s.
 - (c) Develop, implement, and share data collection and evaluation instruments for their respective populations, consistent with applicable federal and state requirements.

(d) Develop and implement a system whereby all D.Y.S. youth who reside in secure facilities and have been identified as having special needs receive a TEAM Evaluation and an Individualized Education Plan (I.E.P.) according to the assessment procedures which are set forth in the Massachusetts 766 Regulations. For all youth who are committed to the Department of Youth Services, the referral for a TEAM Evaluation should be made through the Department of Youth Services' regional educational liaisons' network. For all youth who are on detention status, the referral for a TEAM Evaluation should be made through the appropriate Bureau of Institutional Schools' District Evaluation Team Liaison (E.T.L.).

(e) Exchange training, resources, and technical assistance.

5. Both agencies will comply with their federal and state regulations and statutes.
6. The Bureau of Institutional Schools will monitor the provision of special education services according to federal and state guidelines in the agreed upon secure facilities of the Department of Youth Services.
7. Both agencies recognize that the Director of the Bureau of Institutional Schools at the Department of Education's Division of Special Education and the Director of Education at the Department of Youth Services are responsible for the implementation of educational activities in the Department of Youth Services' secure facilities in accordance with all applicable federal and state regulations and statutes.
8. Both agencies agree that the Director of Education at the Department of Youth Services will develop a comprehensive education policy in cooperation with the Department of Education.
9. Both agencies agree that the Bureau of Institutional Schools will fund the following:
 - (a) Special education services annually in each of the Bureau's Districts. The number of special education teachers may change based upon the need for special education services, as documented and determined by Massachusetts 766 Regulations and legislative appropriation. See Appendix A for the names of the agreed upon secure programs.
 - (b) Supervisory positions, as required, to evaluate and monitor teacher performance and responsibilities.
 - (c) Support costs which are necessary to effectively operate the program.
 - (d) A Management Information System (M.I.S.) for the collection and dissemination of all pertinent educational data such as youths' scores on the Informal Screening Assessment (I.S.A.), Individualized Educational Plan (I.E.P.) information, progress on the BIS/DYS Competency Based Curriculum (C.B.C.).

10. Both agencies recognize and support the services delivered by the teachers in the Department of Youth Services' secure facilities and agree that:
- (a) All special education teachers funded by the Bureau of Institutional Schools are responsible to the appropriate District Office and the vendor to whom a contract for special education services has been awarded.
 - (b) All special education teachers funded by the Bureau of Institutional Schools will conform to the policies and procedures which have been established by the Bureau of Institutional Schools, the Department of Youth Services, and the secure programs where they work.
11. The Bureau of Institutional Schools' District Managers, or their designees, and their designated supervisory personnel will meet with the Director of Education at the Department of Youth Services, or her/his designee, bi-monthly to monitor and evaluate the B.I.S./D.Y.S. education program. In addition, the Director of the Bureau of Institutional Schools, or her/his designee, and the Director of Support Services at the Department of Youth Services, or her/his designee, will meet quarterly.
12. The Department of Youth Services agrees to fund education liaisons who will work in each of its regional offices. See the addendum for a description of their responsibilities to the youth who are committed to the Department of Youth Services.
13. The Department of Education's Division of Special Education, through its Bureau of Institutional Schools will provide Evaluation Team Liaisons (E.T.L.'s) who will work in each of the Bureau's Districts. (See addendum for a description of their responsibilities to youth in secure facilities with a Bureau of Institutional Schools' presence.)
14. The Bureau of Institutional Schools' Central Office and its District Managers will be responsible for the following:
- (a) The notification of L.E.A.'s of the new B.I.S./D.Y.S. prototype for all special needs youth who are placed in the Department of Youth Services' secure facilities and the resolution of all problems associated with the use of this B.I.S./D.Y.S. prototype.
 - (b) The establishment of a procedure for an annual monitoring process at each of the appropriate secure facilities for the purpose of granting a Bureau of Institutional Schools' approval to its educational component.
 - (c) The provision of technical assistance and in-service training to the Department of Youth Services in the development of appropriate curriculum for the special needs' students in its secure programs.
 - (d) The provision of a compliance checklist which is required to document the delivery of special education services.
 - (e) The assumption of all special education responsibilities by the B.I.S. District Managers. These responsibilities include the

14.

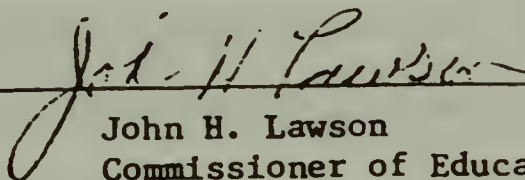
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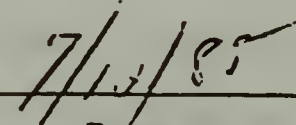
following: an annual program evaluation, resource team services, compliance monitoring and re-contracting.

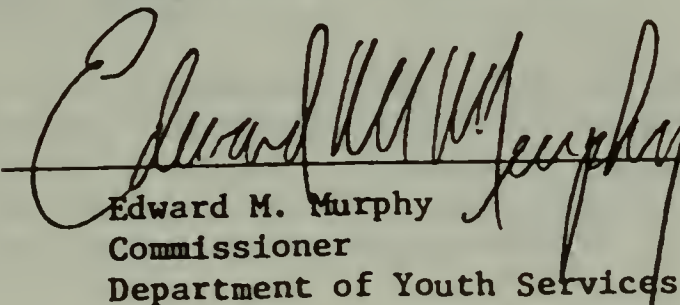
15. Both agencies agree that:

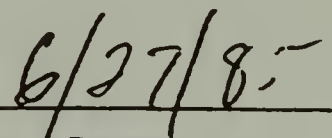
- (a) The D.Y.S. 89-313 Grant will be implemented by the Department of Education through its Division of Special Education/Bureau of Institutional Schools for D.Y.S. youth who have been identified as having special needs and have completed Individual Education Plans.
- (b) The Department of Education through its Division of Special Education/Bureau of Institutional Schools will count 89-313 eligible youth in agreed upon D.Y.S. sites.
- (c) The Bureau of Institutional Schools will coordinate and consult with the Department of Youth Services in the development, implementation, supervision, and evaluation of projects/programs funded through 89-313.

This agreement will take effect upon the approval date and remain in effect until amended or re-negotiated.


John H. Lawson
Commissioner of Education


Date


Edward M. Murphy
Commissioner
Department of Youth Services


Date

Appendix A

B.I.S./D.Y.S. SITES BY DISTRICTS

Boston District

The Judge Connelly Youth Center's Secure Detention
The Judge Connelly Youth Center's Secure Treatment
The Justice Resource Institute (J.R.I.) Boston Secure Treatment Unit at the
Judge Connelly Youth Center

The Ledgewood Short-Term Secure Treatment Unit
The Charlestown Secure Detention Program
The Greater Boston Y (G.B.Y.) Challenge Secure Detention Program
The Greater Boston Y (G.B.Y.) Challenge Shelter Care/Limited Secure Program
The Justice Resource Institute (J.R.I.) Evaluation Unit
KEY Cameron House
Action Intake Development Services (A.C.I.D.) Shelter Care/Limited Secure Program

Central District

The Worcester Secure Treatment Unit
The Worcester Hale Building Shelter Care/Limited Secure Unit
The Pelletier Center's Secure Detention Program
Robert Fitzgerald Kennedy (R.F.K.) Action Corps, Westborough Secure Treatment Unit
The Sharp Building, Westborough Secure Detention Unit
The Sharp Building, Westborough Secure Treatment Unit a.k.a. Boston Offender
Project Program (B.O.P.)
The Sharp Building Butler Center Program
The Dynamic Action Residence Enterprise, Inc. (D.A.R.E.) Littleton Girls' Secure
Treatment Unit

North District

The Robert Fitzgerald Kennedy (R.F.K.) Action Corps. Fay Rotenberg Girls' Secure
Treatment Unit
The Northeast Family Institute (N.F.I.) Shelter Care/Limited Secure Program

South District

Old Colony Y Brockton Boys' Shelter Care/Limited Secure Program
Old Colony Y Brockton Girls' Secure Detention Unit
Old Colony Y Brockton Diagnostic Assessment Unit
Greater Boston Y (G.B.Y.) Camp Halifax Shelter Care/Limited Secure Program
Project LEAP Limited Secure Program

West District

The Westfield Secure Detention Program
The Center for Human Development (C.H.D.) Shelter Care/Limited Secure Program
in the Springfield Y.M.C.A.
The Center for Human Development Lakeside Shelter Care/Limited Secure Program
The Center for Human Development Shelter Care/Limited Secure Program in Holyoke

N.B.

The vendors/providers listed above may change at any time, as well as the
location of these sites.

APPENDIX B

APPLICABLE REGULATIONS UNDER P.L. 94-142 AND

EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS

(EDGAR)

It is mutually understood that the Director of the Bureau of Institutional Schools has been designated as the Department of Education's Representative to insure that this Agreement fully complies with P.L. 94-142 Regulations and EDGAR (34CFR Part 76). Substantial compliance with the paragraphs paraphrased below is mandatory and all parties to the Agreement understand that these provisions are incorporated into the Agreement by specified reference.

I. The STATE EDUCATIONAL AGENCY is responsible for insuring the following:

- (a) That the requirements of this part are carried out.
- (b) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:
 - (i) is under the general supervision of the persons responsible for educational programs for handicapped children in the State Educational Agency,
 - (ii) meets educational standards of the State Educational Agency (including the requirements of this part).

II. The State must comply with Paragraph (a) of this section through State Statute, State Regulations, signed Agreement between respective agency officials, or other documents.

- (a) Undertake monitoring and evaluation activities to insure compliance of all public agencies within the State with the requirements of Subparts C, D, and E.
- (b) Develop procedures (including specific timelines) for monitoring and evaluating public agencies involved in the education of handicapped children.

These procedures must include:

- (1) Collection of data and reports
- (2) Conduct of on-site visits
- (3) Audit of Federal Fund utilization
- (4) Comparison of a sampling of individualized education programs with the programs actually provided.

Each State Educational Agency shall adopt effective procedures for reviewing, investigating and acting on any allegations of substance, which may be made by public agencies, or private individuals, or organizations, of actions taken by any public agency that are contrary to the requirements of this part.

In carrying out the requirements in Paragraph (a) of this section, the State Education Agency shall:

- (a) Designate specific individuals within the agency who are responsible for implementing the requirements;
- (b) Provide for negotiations, technical assistance activities, and other remedial action to achieve compliance;
- (c) Provide for the use of sanctions, including the withholding of Part B funds in accordance with 121a 194.

CHAPTER 18A

DEPARTMENT OF YOUTH SERVICES

§ 2. Delinquency prevention programs

The department shall provide a comprehensive and coordinated program of delinquency prevention and services to delinquent children and youth referred or committed to the department by the courts; community services for the prevention of juvenile delinquency through its own staff, through grants-in-aid to cities, towns, and other public agencies and through purchase of services from private nonprofit agencies; and services and facilities for the study, diagnosis, care, treatment, including physical and mental health and social services, education, training and rehabilitation of all children and youth referred or committed. The department shall maintain a program of research into the causes, treatment and prevention of juvenile delinquency, including new methods of service and treatment. The department shall cooperate with other state and local agencies, both public and private, serving children and youth.

BUREAU OF INSTITUTIONAL SCHOOLS/DEPARTMENT OF YOUTH SERVICESEVALUATION TEAM LIAISON JOB DESCRIPTION

For Department of Youth Services youth in facilities with Bureau of Institutional Schools (01/07) staff:

1. Educational Records

The Liaison will obtain educational records as follows:

Committed: Within five working days of commitment at a facility, the Evaluation Team Liaison will obtain signed release of information and request/obtain from the responsible DYS liaison all educational records/information.

Detained: Within 10 working days of detention at a facility, the Evaluation Team Liaison will obtain signed release of information and request/obtain from the responsible LEA all educational records/information.

2. Individualized Educational Plan Development

The Liaison will assist and/or develop Individualized Educational Plans as follows:

Committed: Within two weeks of obtaining the signed ETL release of information form, the Evaluation Team Liaison will determine, in conjunction with the Bureau of Institutional Schools teacher, whether youth should be referred for further diagnostic testing and/or a team evaluation. The Evaluation Team Liaison will refer youth to DYS liaison. ETL will attend Team meeting and monitor IEP completion and implementation. Testing, assessments, and evaluations must occur in accordance with the Chapter 766 guidelines: Within five days after the referral for evaluation is received, the LEA must request written permission from parent/guardian to conduct evaluation. Once parent/guardian permission is received, within 30 working days the team meeting must be held and an IEP developed (or indication of findings of no special needs). Two weeks prior to the date for the team meeting, the Evaluation Team Liaison will meet with all unit staff to develop (1) student profile, (2) additional information, (3) types and hours of services required, (4) current performance levels, teaching approaches and methodologies, etc., and (5) IEP goals and objectives. The information will be provided to the DYS liaison for the LEA IEP development.

Detained: The Evaluation Team Liaison will send a letter to the LEA requesting a meeting to discuss placement and planning activities two weeks after the request for educational information has been sent to the LEA. (If youth is committed within the above time frame, follow procedures under "committed". If youth is discharged within the above time frame, discontinue contact). After planning and placement meeting, the Evaluation Team Liaison, BIS teacher, and LEA will determine whether a Team meeting is appropriate.

3. Monitoring

In compliance with the Bureau of Institutional Schools periodic format, the Evaluation Team Liaison will complete progress reports as follows:

Detained/Committed: Using the prescribed format, all students with IEP's or informal goals/objectives who have been in the program three weeks prior to the end of the period will have Evaluation Team Liaison/Teacher progress reports.

Evaluation Team Liaison will conduct record reviews semi-annually in accordance with Bureau and District compliance.

Evaluation Team Liaison will conduct program visits at least once a month to review student progress and provide programmatic/technical assistance.

4. Other Duties

Provide documentation for District files - in order to comply with State and Federal mandates.

Attend DYS unit and DYS regional office staffings as requested/required.

Meet at least quarterly with DYS liaisons.

Obtain current census information on a monthly basis.

ETL will administer the DYS Informal as requested by BIS - teacher in DYS facilities.

Other assigned tasks as required by District Manager.

ADDENDUM

THE DEPARTMENT OF YOUTH SERVICE'S EDUCATIONAL LIAISON'S
DUTIES AND RESPONSIBILITIES

I. The Educational Liaison with a Specialization in Cost-Sharing Negotiations

The Educational Liaison, a cost-share negotiator, is an administrator in education management. The primary responsibility of the Education Liaison is to provide assistance in the development and implementation of education programs for D.Y.S. committed youth* in specific regions. This includes overseeing the 766 educational process, serving as a link between D.Y.S. regional offices and the local educational agencies (L.E.A.'s), serving as a member of interagency groups, conferring with Special Education Directors and Superintendents, and conducting all cost share negotiations. The Educational Liaisons are responsible to the Education Liaison Supervisor. State certification in Special Education is required.

Specific responsibilities include:

- a. The initiation and coordination of the development of an educational plan for each D.Y.S. committed youth* which includes the following:
 1. The notification and requesting of educational records from the responsible LEA within 48 hours of commitment (and the Department of Education Regional Offices where appropriate under existing laws and regulations.)
 2. The referral of youths for assessment.
 3. The coordination of the Team Process.
 4. The preparation and presentation of education records at Regional Case Conferences and Team Meetings.
 5. The participation in the educational aspects of placement decisions.
- b. The negotiation of all cost share agreements with LEA's utilizing existing laws and regulations prior to placement, if possible.
- c. The sharing of information at the Regional Offices of the Department of Education on all non-compliance issues.

* For Southeast Region, Court referred youths approved by the Regional Office are included.

- d. The maintenance of a current record system for each committed youth* in accordance with established standards as follows: dates of commitment, notification to LEA, referral for assessment, Team Meeting, Regional Case Conference and placement; recommendation of assessment of Regional Case Conference and of Team Meeting; substance of cost-share agreements and non-compliance issues. (protection of youth's rights Re: school, law and Chapter 766, etc.)
- e. The monitoring of the progress of clients including:
 - 1. Notification of LEA's of change of placement status, particularly those youth under a cost-shared agreement.
 - 2. Periodic monitoring and evaluation of implementation of IEP's (not to supplant LEA responsibilities for same).
- f. The coordination of education services for all committed youth* in transition returning to the community from public or private programs.
- g. The provision of technical assistance and in-service training to DYS Regional Staff, clients, parents, local school officials, BIS, and Chapter I teachers around legal issues and implementation of Chapter 766 and General Education Laws; i.e., "Bill-Back", parent's rights, etc.

II. The Educational Liaison with a Specialization in Diagnostic Assessment

The Education Liaison, Diagnostician, is an administrator in education management, as well as an evaluator, who administers a comprehensive battery of psychoeducational, vocational, and behavioral assessments to determine the need for special education services and/or appropriate educational programming. In addition, the Diagnostician helps to coordinate activities for the implementation of 766 procedures as outlined in "Educational Liaison" (cost-share negotiator); and is available for consultation with regional staff, DYS teachers, and LEA's. The Educational Liaisons are directly responsible to the Education Liaison Supervisor. State certification in Special Education is required.

Specific responsibilities included those outlined above under cost-share negotiators, as well as the following:

- a. The assessment of the educational status of DYS committed youth* by evaluating current assessment, including those administered by local educational agencies. If needed, they will also administer and interpret additional diagnostic and psychoeducational evaluations.

- b. Provision of reports which include information on the relation of test findings, behaviors observed and previously reported, and recommendations.
- c. Assistance in the development of the Individual Education Plans for DYS youth, when requested by LEA's. This may include preparation and presentation of educational records at Team Meetings, Regional Case Conferences and other appropriate consultations.
- d. The evaluation of the quality and comprehensiveness of current testing instruments.
- e. The provision of technical assistance and guidance on all testing related matters; conducts in-service training on educational assessment interpretation to DYS regional staff, special education teachers and parents.

III. Organization Structure of the Department of Youth Services' Liaison Project.

Executive Director

Educational Liaison Supervisor

Educational Liaisons

County Houses of Correction Agreements with the Department of Education

Norfolk (attached)
Franklin
Berkshire
Hampshire
Hampden
Barnstable
Bristol
Plymouth
Worcester
Middlesex
Essex-Lawrence
Essex-Salem



The Commonwealth of Massachusetts

Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169

Interagency Agreement Between
Department of Education
and
County Houses of Correction

Agreement between the Department of Education/Division of Special Education through the Bureau of Institutional Schools (BIS) and Norfolk County House of Correction.

Applicable provisions of the federal Public Law 94-142 and Chapter 71B of the General Laws of the Commonwealth have been incorporated into this agreement.

Consistent with M.G.L., C. 71B, nothing contained herein shall affect the continued authority of the County Houses of Correction over all non-special educational programs and all treatment for eligible inmates at Norfolk County House of Correction.

For purposes of this agreement, an "eligible inmate" is an inmate under the age of 22 who does not have a high school diploma or its equivalent and who has been determined, through the evaluation process, as set forth in the Chapter 766 Regulations, to have special needs.

WHEREAS: Both the County House of Correction and the Department of Education are committed to the implementation of P.L. 94-142 and Chapter 766;

Both the County House of Correction and the Department of Education recognize the need to meet the educational needs of eligible inmates admitted to the County House of Correction:

WHEREAS: The Department of Education has the statutory responsibility for insuring that a free and appropriate public education is available to all special needs children in the Commonwealth from age three (3) until their twenty-second (22) birthday regardless of race, sex, religion, ethnic origin and/or physical and mental handicap.

NOW THEREFORE, the Norfolk County House of Correction and the Department of Education agree to the following terms and conditions:

1. The Department of Education/Division of Special Education through the Bureau of Institutional Schools is responsible for funding the special education teacher at the Norfolk County House of Correction.

2. The special education teacher shall have appropriate special education certification and will be hired by the Bureau of Institutional Schools in conjunction with the designated Norfolk County House administration.

3. The authority to monitor work performance and to recommend the discipline or dismissal of the special education teacher will be a joint responsibility between the Bureau of Institutional Schools and the Norfolk County House of Correction.

4. The Norfolk County House of Correction staff shall insure that each inmate is informed of his/her rights under Chapter 766, utilizing the attachment in addendum A.

5. The Bureau of Institutional Schools Special Education teacher(s) along with existing Norfolk County House of Correction classification and education staff, will attempt to insure that:

- a. each "eligible inmate" who is referred for or requests a special education evaluation shall receive a special education evaluation consistent with applicable state and federal laws and regulations; and
- b. each "eligible inmate" who is determined to have special needs shall receive special education services based on the assessment and evaluation procedures set forth in all applicable state and federal requirements and regulations.

6. The Bureau of Institutional Schools Special Education teacher and the Bureau of Institutional Schools Evaluation Team Liaison shall be responsible for the provision of an Educational Assessment for eligible inmates.

7. The Norfolk County House of Correction shall be responsible for the provision of other assessments and other services to "eligible inmates", including, but not limited to:

- a. psychological,
- b. medical,
- c. social.

8. The Norfolk County House of Correction and the Bureau of Institutional Schools shall work cooperatively to identify appropriate classroom space within the facility.


9. The Bureau of Institutional Schools shall fund and hire an Evaluation Team Liaison to assist in the development of Individual Education Plans for eligible inmates as well as provide technical assistance/in-service training as required and identified by Norfolk County House of Correction and Bureau of Institutional Schools education staff.

10. The Bureau of Institutional Schools Evaluation Team Liaison shall work in conjunction with the Norfolk County House of Correction staff and the Bureau of Institutional Schools teacher to identify appropriate educational services/placement for eligible inmates prior to release.

11. The Bureau of Institutional Schools agrees to implement the attached job descriptions as set forth in addendum B and C.
12. The Bureau of Institutional Schools will conduct an annual evaluation of the contracted special education program at the Norfolk County House of Correction.
13. The Norfolk County House of Correction recognizes and accepts the monitoring responsibilities of the Department of Education with respect to the mandates of P.L. 94-142 and Chapter 766 and the monitoring of the job responsibilities set forth in the addenda and incorporated herein.
14. The Department of Education recognizes and accepts that security constraints may take precedence over efforts to deliver special education services in the least restrictive environment.
15. Both agencies agree that this document will take effect upon approval date and will remain in effect until amended or renegotiated.

SIGNED:


DATE: 5/22/85


 Asst. Deputy Supt.
 Deputy Supt. or Director of Human Services
 Norfolk County House of Correction

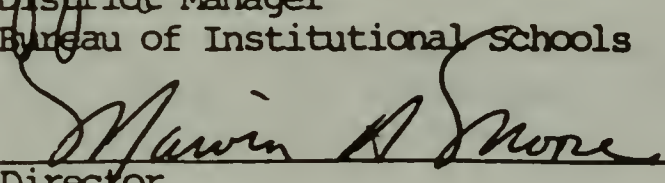
DATE: 5/22/85


 Sheriff
 Norfolk County House of Correction

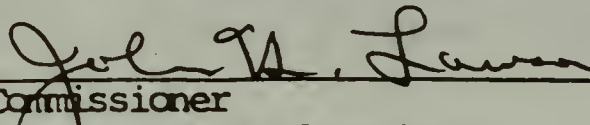
DATE: 8/14/85


 District Manager
 Bureau of Institutional Schools

DATE: 8/22/85


 Director
 Bureau of Institutional Schools

DATE: 9/5/85


 Commissioner
 Department of Education

ADDENDUM A

YOUR RIGHTS AS AN INMATE TO SPECIAL EDUCATION SERVICES

UNDER CHAPTER 766 AND PUBLIC LAW P.L. 94-142

As an inmate under 22 years of age without a high school diploma at a County House of Correction, you have a right to be evaluated for special education services and to receive the services written in an education plan. You are not required to participate in this program. Your rights are summarized as follows:

REFERRAL You have the right to request an evaluation for special education services and to be told in detail about the evaluation and available programs. You may also refuse the evaluation or program.

CONSENT You must agree to any special tests and assessments before they are done

EVALUATION You have a right to a complete evaluation of your individual educational needs. A team of people will meet with you to do the evaluation and determine your program. A meeting must be held within 30 school working days after you agree to the evaluation to determine if you need a special education program.

INDIVIDUAL
EDUCATION
PLAN If you are found to need a special education program, you will receive a Individual Education Plan (I.E.P.) based on your special education needs. You should go to the meeting to help plan your program. The "I.E.P." will tell you what kind of special education services you should receive and who will provide these services. The "I.E.P." must be completed and given to you 10 days after the meeting. You must sign the plan if you agree that you want to receive the special education services.

RECORDS You have a right to know what education records are kept on you and a right to see those records.

CONFIDENTIALITY Only Department of Education and the County House of Correction staff may see your educational records without your permission. Anyone else needing to see your educational records must have your written permission.

APPEAL You have the right to disagree with any evaluation or your educational program. If you disagree with the education plan or program, you should indicate your disagreement in writing. You have a right to appeal the p

Inmate's Name

Date

cc: ETL/Teacher file

ADDENDUM B

BUREAU OF INSTITUTIONAL SCHOOLS/COUNTY HOUSES OF CORRECTION

SPECIAL EDUCATION TEACHER JOB DESCRIPTION

- Provides direct instructional services to eligible students.
- Participates in TEAM meetings in conjunction with Evaluation Team Liaison.
- Presents educational assessment results to TEAM in concert with Evaluation Team Liaison
- Provides formal and informal assessments to student when necessary in concert with Evaluation Team Liaison.
- Develops general goals and specific objectives for achieving these goals for students in concert with Evaluation Team Liaison.
- Develops programs for individual students in accordance with objectives of educational plans in conjunction with Evaluation Team Liaison.
- Prepares required student progress reports in conjunction with Evaluation Team Liaison.
- Participates in transdisciplinary development of overall program curriculum as required.
- Responsible for the daily/weekly accumulation of student data.
- Maintains professionally appropriate communication with instructional personnel, local school system, etc.
- Meets with Supervising Teacher for evaluation and related program activities.
- Participates in B.I.S., C.H.C., and D.O.E. inservice training programs designed to improve program performance and service delivery.
- Demonstrates conduct and behavior expected of a professional at all times.
- Other assigned tasks as required by Supervising Teacher and/or designated District Manager.

BUREAU OF INSTITUTIONAL SCHOOLS/COUNTY HOUSES OF CORRECTION

EVALUATION TEAM LIAISON JOB DESCRIPTION

1. Educational Records

Within five days after inmate indicates that he/she is interested in education (classification and screening must have been done by CHC administration), the Evaluation Team Liaison will obtain a signed release of information and requests/obtains educational records from the responsible school district (LEA).

2. Individualized Educational Plan Development

Within two weeks of request for educational records from the LEA, the Evaluation Team Liaison will determine, in conjunction with the Bureau of Institutional Schools teacher, whether the inmate should be referred for team evaluation to the appropriate LEA (based on informal testing and inmate agreement to IEP Process).

The Evaluation Team Liaison will refer the inmate for an evaluation to the responsible LEA. The evaluation must occur in accordance with Chapter 766 guidelines: Five days after the referral for evaluation, the LEA must request parent/guardian permission if inmate under 18 or obtain inmate permission if over 18 (ETL may expedite with LEA permission). Once permission is received, the LEA must schedule a team meeting and develop the IEP within 30 working days. Since IEP's are only written for the period of incarceration, the LEA, ETL, and CHC personnel may work out agreements as to who provides the required assessments, who chairs the team, and where the team meeting is held. All IEP's, however, must contain the proviso that prior to discharge, a new team meeting should be held to develop an IEP for community placement. (Inmate must agree to new team meeting).

Prior to the team meeting, the ETL should meet with all personnel responsible for assessing the inmate to collect and review assessments.

The IEP should be developed by the ETL, LEA, BIS and CHC staff, and contain (1) student profile, (2) additional information as needed, (3) type and hours of required services, (4) current performance levels, etc. and (5) goals and objectives.

3. Monitoring

In compliance with the Bureau of Institutional Schools periodic format, the ETL will complete progress reports as follows:

Using prescribed format, progress will be reported on either IEP or informal goals and objectives for any inmate in the program three weeks prior to the end of the period. The ETL and teacher should jointly prepare the progress report.

4. Pre-Placement and Follow-Up

Any inmate involved in an educational program after release should be followed-up by the ETL for three months. This should include:

Pre-placement planning with LEA - update IEP

Monthly visit to program

Preparation of monthly status report

Three-month summary report

5. Other Duties

Attend District Manager meetings as requested

Maintain current census to Districts on a monthly basis

Provide documentation for District files in order to comply with State and Federal mandates

APPENDIX C

APPLICABLE REGULATIONS UNDER P.L. 94-142 AND EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (EDGAR)

It is mutually understood that the Director of the Bureau of Institutional Schools has been designated as the Department of Education's Representative to insure that this Agreement fully complies with P.L. 94-142 Regulations and EDGAR (34CFR Part 76). Substantial compliance with the paragraphs paraphrased below is mandatory and all parties to the Agreement understand that these provisions are incorporated into the Agreement by specified reference.

1. The STATE EDUCATIONAL AGENCY is responsible for insuring the following:
 - a) That the requirements of this part are carried out.
 - b) That each educational program for handicapped children administered within the State, including each program administered by any other public agency;
 - (i) is under the general supervision of the persons responsible for educational programs for handicapped children in the State Educational Agency,
 - (ii) meets educational standards of the State Educational Agency (including the requirements of this part).
- II. The State must comply with Paragraph (a) of this section through State Statute, State Regulations, signed Agreement between respective agency officials, or other documents.
 1. Each STATE AGENCY shall:
 - a) Undertake monitoring and evaluation activities to insure compliance of all public agencies within the State with the requirements of Subparts C, D, and E.
 - b) Develop procedures (including specific timelines) for monitoring and evaluating public agencies involved in the education of handicapped children.

APPENDIX C

1. Each STATE AGENCY shall:

b) Cont.

These procedures must include:

- (1) Collection of data and reports
- (2) Conduct of on-site visits
- (3) Audit of Federal Fund utilization
- (4) Comparison of a sampling of individualized education programs with the programs actually provided.

1. Each State Educational Agency shall adopt effective procedures for reviewing, investigating and acting on any allegations of substance, which may be made by public agencies, or private individuals, or organizations, of actions taken by any public agency that are contrary to the requirements of this part.

II. In carrying out the requirements in Paragraph (a) of this section, the State Educational Agency shall:

- a) Designate specific individuals within the agency who are responsible for implementing the requirements;
- b) Provide for negotiations, technical assistance activities, and other remedial action to achieve compliance;
- c) Provide for the use of sanctions, including the withholding of Part B funds in accordance with 121a.194.

APPENDIX 12

Massachusetts Regulations for the Approval of Private
Special Education Schools to Serve Publicly
Funded Students - June 1984

603 C.M.R. Section 18.00

603 C.M.R. SECTION 18.00

REGULATIONS FOR THE APPROVAL OF PRIVATE SPECIAL EDUCATION SCHOOLS
TO SERVE PUBLICLY FUNDED STUDENTS

JUNE 1984

Publication Number 13497
Approved by Daniel D. Carter, Purchasing Agent

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The Massachusetts Department of Education insures equal employment/educational opportunities/affirmative action regardless of race, color, creed, national origin or sex, in compliance with Title IX, or handicap, in compliance with Section 504.

REGULATIONS FOR THE APPROVAL OF PRIVATE SPECIAL EDUCATION
SCHOOLS THAT SERVE PUBLICLY FUNDED STUDENTS

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- (1) Purpose. These regulations are promulgated by the Board of Education in cooperation with the Departments of Mental Health and Public Health, pursuant to M.G.L. C. 71B, s. 10. They govern the approval and monitoring of private institutions that wish to provide special education programs for publicly funded Massachusetts students whose special education needs require placement in a private school rather than in a less restrictive public school program. These regulations permit approval of private special education schools in order to insure that a continuum of special education programs is available to Massachusetts students. These regulations do not provide a private school with a license to do business in Massachusetts but rather, permit a private school to accept publicly funded Massachusetts students who are in need of such a restrictive special education program.
- (2) Relationship Between These Regulations and Other Regulations. The rights and responsibilities included in these regulations are applied in conjunction with the Office for Children Regulations which govern the operation of group care facilities, the Chapter 766 Regulations, and the Massachusetts Rate Setting Commission Regulations. Students in approved private special education school programs shall not be denied any rights as defined by Chapter 766 and Public Law 94-142, including paragraph 504.2(d) (i) of the Chapter 766 Regulations, as amended, which requires compliance with all elements of the IEP.
- (3) Effective Date. The effective date of these regulations shall be July 15, 1984. As of this date, the approval status of all private special education school programs granted under prior approval procedures shall remain in effect pending the submission of an initial application and review by the Department as required by section 18.01 (4) below. This interim approval status shall in no case extend beyond July 1, 1985.
- (4) Initial Application Under These Regulations. All private special education school programs seeking approval under these regulations shall submit an application on standardized forms in accordance with section 18.02 to the Division of Special Education through the appropriate Regional Branch Office within 90 days of the effective date of these regulations.
- (5) Severance Clause. If any provision contained in these regulations or the application thereof to any person or circumstance is held invalid, the remainder of the regulations and the application of the provision in question to other persons not similarly situated or to other circumstances shall not be affected thereby.

(6) Definitions.

- (a) "Approval," a written certificate, whether full, provisional, or temporary, issued by the Department of Education, Division of Special Education. A full or provisional approval authorizes a private school program to provide special education services at a specified level for tuition rate setting purposes to publicly funded students who have IEPs developed in accordance with the Chapter 766 Regulations.
- (b) "Board of Education," the Massachusetts State Board of Education.
- (c) "Chapter 766 Approved Private School," a private school approved in accordance with these regulations.
- (d) "Chapter 766 Regulations," the regulations promulgated pursuant to St.1972, c. 766 and codified as 603 C.M.R. 28.00 et seq.
- (e) "Commissioner," the Commissioner of Education or designee.
- (f) "Days," calendar days, unless otherwise specified in these regulations.
- (g) "Department," the Department of Education acting through the Division of Special Education.
- (h) "Division," the Division of Special Education of the Department of Education, including Division staff assigned to the Regional Branch Offices.
- (i) "Emergency Termination," removal of a student from a program due to an unplanned circumstance, including a student endangering his/her physical health or safety or endangering the physical health or safety of others.
- (j) "IEP," the individualized educational plan developed by the local school district's evaluation TEAM and containing the elements described in paragraphs 322.0 and 323.0 of the Chapter 766 Regulations.
- (k) "Instructional Time," the hours during which both students and teachers are present and engaged in regularly scheduled teaching-learning activities. For purposes of these regulations, a lunch period of at least twenty minutes duration must be included in the daily schedule and cannot be considered as instructional time. This definition is in accord with Board of Education Regulations 603 C.M.R. 27.00: School Year and School Day Regulations.
- (l) "LEA," the local education agency, local school district or public school pursuant to Chapter 71B or M.G.L. C. 76, s. 1.

- (m) "License," any written certificate, whether full or provisional, issued by the Office for Children to any day care center that provides special education pursuant to 603 CMR 28.00 paragraph 502.8 or any group care facility.
- (n) "Local Administrator of Special Education," the person appointed by the school committee of any city, town, or school district to serve as the Administrator of Special Education in accordance with the provisions of M.G.L. Chapter 71B and the Chapter 766 Regulations.
- (o) "Parent," father, mother, or guardian; person or agency with care and custody legally authorized to act on behalf of the student, in place of or in conjunction with the father, mother, or guardian; a person acting as parent; or surrogate parent who has been appointed in accordance with Division procedures. A student who is eighteen years of age or older may act on his/her own behalf in place of the parent.
- + (p) "Private School/Approved Private School," a private day or residential school, within or outside of the Commonwealth of Massachusetts, which has been approved by the Department pursuant to these regulations and which offers special education services and curriculum instruction delivered by appropriately certified or approved special education staff to every student. Each student placed in a private school shall either:
 1. Have an IEP developed pursuant to the Chapter 766 Regulations (or pursuant to another state's special education procedures promulgated in accordance with the federal Education for All Handicapped Children Act, P.L. 94-142) which calls for the type of special education program provided by the school; or
 2. If a student was placed at parental expense, such student must have received a multidisciplinary evaluation which has identified the student as needing the type of special education program offered by the school.
- (q) "Private School Program," a particular component of an approved private school which also has been approved pursuant to these regulations.
- (r) "Private School Administrator," the person designated as the administrative authority regarding the operation of the school. In the event that the Private School Administrator also functions as the educational administrator, he/she must be certified as an Administrator of Special Education by the Massachusetts Department of Education or be appropriately certified for the type of students served and have demonstrated administrative experience. Where the educational administrator has served in that capacity in a

private school program that has had full approval since September 1, 1979, that person may remain in the same position in the same program without additional certification. Should the educational administrator transfer to another program, certification will be required and a newly hired educational administrator for that program' must meet the certification requirements.

- (s) "Rate Setting Commission," the Massachusetts state agency created under M.G.L. C. 6A, s. 32 authorized to establish rates of reimbursement for services provided to publicly funded students.
- (t) "School Day," the average annual length of the school day for private special education schools/programs shall be not less than five hours of instructional time for elementary level programs and not less than five and a half hours of instructional time for secondary level programs in accord with Board of Education Regulations 603 C.M.R. 27.00: School Year and School Day Regulations.
- (u) "School Year," the minimum length of the school year for private special education schools/programs shall be not less than 180 days exclusive of weekends, holidays, and vacations in accord with Board of Education Regulations 603 C.M.R. 27.00: School Year and School Day Regulations for a ten month program and a comparable number of additional days for each additional month that a program is in session.
- (v) "Special Education," services which are required to be provided to a student in need of special education pursuant to the IEP for such student.
- (w) "Separate Center-Based Programs," (502.8c) programs designed to serve students ages three and four with substantial disabilities and in which fifty percent or more of the students enrolled have IEPs developed in accordance with the provisions of Chapter 766 and require such a program. Such separate center-based programs shall be licensed by the Office for Children and approved by the Department of Education pursuant to appropriate sections of these regulations. Sections of these regulations marked with a + are not applicable to separate center-based programs, program prototype 502.8c.
- (x) "TEAM Evaluation," the process and procedures for developing an IEP as prescribed by Chapter 3 of the Chapter 766 Regulations.
- (y) "Time Out," any period of time during which a student is excluded, as a result of inappropriate behavior, from receiving the regularly scheduled special education and related services required by the student's IEP.

18.02**APPLICATION FOR APPROVAL AS A PRIVATE SPECIAL
EDUCATION SCHOOL TO SERVE PUBLICLY FUNDED STUDENTS****(1) Eligibility.**

- (a) Any individual, not for profit corporation or agency, or proprietary corporation may file an application to establish and/or operate a private school to serve special education students as defined by M.G.L. C.71B.
- (b) Minimum and maximum operational capacity of approved private schools.
 - 1. Private schools shall serve a minimum of 20 special education students. The Division may waive this requirement, if the private school can show good cause for such waiver.
 - 2. Private schools, including all approved programs therein, shall not exceed a maximum of 100 special education students. The Division may waive this requirement, if the private school can show good cause for such waiver.
- (c) Private schools granted a waiver under sections 18.02(1)(b)1 and 2, which meet all other requirements under these regulations, are eligible for full approval.

(2) Application Requirements and Procedures. Each applicant for approval shall submit the following information and statement of assurances required by the Division of Special Education, utilizing standard procedures and forms issued by the Division of Special Education, to the Regional Branch Office which serves the community in which the school is located, unless instructed by the Division to do otherwise.

- (a) A statement whether or not previous application for approval has been made and the action taken on it;
- (b) Copies of current certificates of inspection by state and/or local agencies for:
 - 1. Building occupancy;
 - 2. Fire safety;
 - 3. Lead paint safety;
 - 4. Health safety;
 - 5. Approval by the local school committee under M.G.L. C.76,s.1;

6. Approval by the Office for Children to operate a group care facility or a special education day care center, if applicable;
 7. For a school located in a state other than Massachusetts, a copy of the school's approval by the agency of that state required by law to approve special education facilities;
 8. Asbestos, PCBs; and
 9. Other inspections that may be required under federal, state or local statutes or regulations pertaining to the health, safety, and well-being of students.
- (c) A narrative description and documentation of any other certification or license not specifically covered by these regulations that the school has obtained.
- (d) A narrative description of the legal status of the school, including a statement of whether or not the school is incorporated. If the school is incorporated, copies of the articles of incorporation and by-laws, and certification of tax exempt status, if any, shall be provided.
- (e) Evidence of financial solvency including:
1. A signed statement of assurance that the applicant is in good standing with the Massachusetts Department of Revenue, the Massachusetts Division of Employment Security, and, with respect to federal employee withholding taxes, the United States Internal Revenue Service. The private school shall notify the Division of Special Education as part of any application for approval, either for a new program or reapproval, of any outstanding tax liability to state, federal or local government;
 2. Maintenance of accurate records of receipts and expenditures consistent with the Massachusetts Rate Setting Commission regulations 114.4 CMR section 9.09;
 3. Filing Pupil and Financial Reports required by the Department of Education; and
 4. Additional documentation that the Department may require to demonstrate the financial capacity of the school to meet its contractual obligations.
- (f) A signed statement of assurance that the school does not discriminate in enrollment of students on the grounds of race, color, religion, national origin, and that it does not discriminate in the employment of personnel on the grounds of race, color, sex, religion, national origin or handicap.

- (g) A listing of tuition rates for all publicly and privately funded students attending the school including students from outside Massachusetts.
- (h) A detailed description of the physical plant of the school, including any adaptations made to accommodate special education students, and a schedule for making routine inspections.
- (i) A listing of instructional equipment and its use in relation to the goals and operation of the program.
- + (j) A narrative description of the school's library, including facilities or holdings particularly appropriate for students in need of special education.
- (k) A statement of operational capacity and a narrative description of student enrollment which identifies the ages, educational and behavioral characteristics of students served; and a description of the school's philosophy, goals, objectives and curriculum which has been developed to include the special educational, developmental, corrective and supportive services provided in response to those needs. Specific requirements are detailed in section 18:04(3) of these regulations.
- (l) A narrative description of policies and procedures with respect to providing quarterly progress reports to the Administrator of Special Education of the school district responsible for providing special education services to the student in accordance with paragraphs 337 and 505.3 of the Chapter 766 Regulations, and to the appropriate human service agency (if any) which has placed and funded the student.
- (m) A narrative description of how the applicant plans to evaluate the program or programs that are operated. Said evaluation shall be consistent with evaluation processes and procedures required by the Division of Special Education.
- (n) A statement that parents and students have the same rights regarding access to, amendment of, and dissemination of student records maintained by the school as are provided public school students pursuant to the Massachusetts Student Records Regulations, 603 CMR 23.00, and that authorized school personnel from the responsible school system have the same right of access to those records as is provided by those regulations with regard to public school student records.
- (o) A narrative description of the school policies regarding research, experimentation, fund raising, publicity and observation.

1. The school shall not conduct any of the following without prior written notification to, and the prior written specific consent of, the affected student's parent. There also shall be consent by the student if 14 years of age or older unless the school has written documentation that the student is not capable of such a decision. A written copy of the school's notification to parents and the parent's consent, if granted, shall be sent to the public school responsible for the student.
 - a. Research or experimentation;
 - b. Use of the student's or family's name, photographs, or video tapes, for fund raising, publicity or any other purposes.
 2. The school shall not allow, without the written specific consent of the affected student's parent, observations of any student in the school by persons other than parents of current or prospective students, paid staff of the school, volunteers and student interns working in the school, authorized staff of the public schools responsible for students in the school, authorized staff of the Department, or authorized state or federal monitoring personnel.
 3. The consent required under section 18.02(2) (o)1 is not required for observation or data collection used to evaluate or document the services provided by the program when such observation or data collection is conducted by staff from the school, the Department, the public school, the parents, or authorized state or federal monitoring personnel.
 4. The school shall develop and maintain a written policy regarding the requirements of subsections 18.02(2) (o), 1, 2, and 3, and shall make this policy available to parents and public schools.
- (p) A narrative description of the school's policies regarding parent involvement.
1. The school shall have a written plan for involving parents, and shall have a Parents' Advisory Group. The Parents' Advisory Group shall advise the school on matters that pertain to the education, health and safety of the students in the program.
 2. The school shall have a procedure for assuring that it is informed by a parent or guardian of any changes in a student's legal status and of the results of all judicial and administrative proceedings concerning the student; and for disseminating this information to appropriate personnel.

3. Parents shall be involved in the review of IEPs and re-evaluations.

(q) A narrative description of school policies regarding admissions, suspensions and terminations.

1. Requirements for Admissions.

- a. No private school, or program operated by a private school, shall enroll students under the provisions of Chapter 766 unless approved to do so by the Division of Special Education.
- b. Prior to admission, the school shall provide to the parents and the local school district, a written copy of the school's policies and procedures relative to:
 - (i) The school's statement of purpose;
 - (ii) The type of services provided;
 - (iii) Admission criteria;
 - (iv) Parents' and students' rights;
 - (v) Health care including provisions for emergency health care and/or hospitalization;
 - (vi) Planning for both foreseen and emergency terminations;
 - (vii) Discipline and behavior management, including physically abusive behavior by a student to himself/herself or others, and proper use of non-violent restraints;
 - (viii) Activities related to daily living skills;
 - (ix) Contractual obligations with regard to payment for services. The school shall inform in writing any party, other than a local school district, responsible for placement of a student that said party is financially responsible for any costs incurred as a result of any placement not made pursuant to the requirements of Chapter 766;
 - (x) Clothing requirements;
 - (xi) A description of normal daily routines;

- (xii) Any specific treatment strategy employed by the facility;
 - (xiii) A description of any normally occurring religious practices;
 - (xiv) Visiting hours and other procedures related to communication with students and the facility;
 - (xv) Name and telephone number of a staff person whom the parents may contact on an ongoing basis;
 - (xvi) A description of a procedure which the parents or student may use to register complaints regarding the student's education and care at the facility.
- c. No student shall be placed in any Chapter 766 approved private school until the local education agency or the parent provides documentation from a licensed physician of a complete physical examination of the student not more than twelve (12) months prior to the admission. In the event of emergency placements, the private school shall make provisions for a complete examination of the student within 30 days of admission. The results of all physical examinations shall be made part of the student's health record.
2. Admissions Interview. Prior to admission and upon request, the director of the school or designee shall be available to the parents, the student and the public school for an interview.
- a. The interview shall include an explanation of the school's purpose and services, policies regarding parent and student rights including student records, the health program including the procedures for providing emergency health care, and the procedure for termination of a student.
 - b. The interview shall allow the opportunity for the student and parents to see the facilities, to meet staff members, and to meet other students enrolled.

3. Placement Preparation for Residential Students.

- a. The school shall establish procedures to prepare the staff and students in the living unit for the new student's arrival and shall provide staff with appropriate information to receive the new student and assist in his/her adjustment.
- b. Upon admission, the school shall designate and prepare sleeping quarters for the student and space for the student's personal belongings.
- c. The school shall assign at least one staff member to help orient a newly admitted student to the facility and to explain the opportunities and programs available.

4. Physically Abusive Behavior by a Student.

- a. Upon admission of a student, the school shall provide written policies to the parents and student on the use of restraints, exclusion, time out and other aversive procedures. Written informed consent from the parent is required prior to utilizing these techniques. A copy of the signed consent form shall be kept in the student's record.
- b. Restraint or seclusion of students shall be used only in emergency situations where there is the occurrence of serious threat of extreme violence, personal injury, or attempted suicide. Restraint is defined as follows:
 - (i) Passive physical restraint means the least amount of direct force required on the part of a staff member to prevent a student from harming himself/herself or others.
 - (ii) Chemical restraint means the use of psychotropic agents as a form of restraint.
 - (iii) Mechanical restraint means the restriction by mechanical means of a student's mobility and/or ability to use his/her arms or legs except when such restriction is primarily for the prevention or treatment of physical injury as opposed to behavioral intervention.

- c. Any private school using any form of restraint other than passive physical restraint must have the approval of the Division of Special Education, human service agency with students placed there, and, where applicable, the Office for Children.
- d. The private school shall have written policies regarding the use of passive physical restraint which include:
 - (i) The behavioral intervention techniques utilized as alternatives to physical restraint;
 - (ii) The form of physical restraint to be used; and
 - (iii) The controls on abuse of such restraints.
- e. All incidents requiring restraint shall be recorded in the student's record.
- f. All direct service staff shall be provided training in crisis management and the appropriate use of passive physical restraint.
- g. In situations of extreme emergency, restraint may be applied immediately without the required parental consent in order to prevent self-abuse or physical abuse that endangers the health or safety of the student or others.
- h. When a student's behavior endangers the health and safety of self or others, a school may suspend the student from the total program, as provided in section 18.02(2) (q)5 and with the approval of the Division of Special Education.
- i. All cruel and unusual punishments are prohibited, including:
 - (i) Any type of physical hitting inflicted in any manner upon the body;
 - (ii) Undue physical exercises;
 - (iii) Requiring or forcing the student to take an uncomfortable position, such as squatting or bending, or requiring or forcing the student to repeat physical movements;

- (iv) Group punishments for misbehaviors of individuals except in accordance with the facility's written policies;
- (v) Punishment which subjects the student to verbal abuse, ridicule or humiliation;
- (vi) Excessive denial of on-grounds program services or denial of any essential program service;
- (vii) Withholding of any meal; (viii) Denial of visiting or communication privileges with family;
- (ix) Denial of sufficient sleep;
- (x) Requiring the student to remain silent for long periods of time;
- (xi) Denial of shelter, clothing, or bedding;
- (xii) Extensive withholding of emotional response or stimulation;
- (xiii) Chemical, mechanical or excessive physical restraint that have not been approved by the Division pursuant to section 18.02(2) (q)4c;
- (xiv) Exclusion of the student from entry to the residence; and
- (xv) Assignment of unduly physically strenuous or harsh work.

5. Suspension.

- a. Upon admission of a student, the school shall provide a written policy to the parents, and the school district or human service agency that placed the student, stating the policy on suspensions.
- b. Whenever a student is suspended, the school shall immediately notify the parents and the public school or human service agency responsible for the placement. Within 24 hours, the school shall send a written statement explaining the reasons for suspension to the parents, public school or human service agency, and the appropriate Regional and Central Offices of the Division.

- c. No student may be suspended and sent home unless a responsible adult is available to receive the student.
- d. The school, parents, public school or human service agency to the extent feasible, shall explore together all possible program modifications within the school in an attempt to prevent total suspension of the student from the program.
- e. A student may be suspended for no more than three (3) consecutive school days or no more than five (5) non-consecutive school days per year without approval of the Division.
- f. Once a student has been suspended for three (3) consecutive school days or five (5) non-consecutive school days in a school year, the student's case manager from the school (see section 18.04(9)(b)) shall meet with the public school liaison person, or human service agency and the parents within five (5) school days of the final suspension. At this meeting, the parties should consider alternative measures, including modifying programs, plus possible resolutions to those issues or charges concerning the student as well as the possibility of alternative placement. The student if 14 years of age or over, shall be notified by the private school of his/her right to be present and participate in such meeting.

6. Termination.

- a. Upon admission of a student pursuant to Chapter 766 Regulations, the school shall ascertain the name of the liaison between the private school and the public school and, where applicable, the human service agency. The school shall keep the liaison informed of the progress of the student and shall notify that person immediately if termination or discharge of the student is being discussed.
- b. In case of termination:
 - (i) The school shall immediately notify the parents of the student, the public school or human service agency responsible for the placement, and the appropriate Regional and Central offices of the Division.

- (ii) The school shall provide to the public school an opportunity to hold an emergency TEAM evaluation, in accordance with paragraph 331 of the Chapter 766 Regulations.
 - (iii) The school shall, at the time of admission, make a commitment to the public school or human service agency that it will try every available means to maintain the student's placement until the local Administrator of Special Education or human service agency has had time to search for an alternative placement.
 - (iv) In the event of an emergency termination, the school shall send a written discharge summary explaining the circumstances of the unplanned discharge to the parents, the public school or human service agency, and the Central and Regional Offices of the Division within seven (7) days of the discharge. If such discharge is questioned by the parents or the public school in terms of appropriateness, this shall be reviewed by the Regional Branch Office.
- c. Except in the case of an emergency, the school shall prepare a written termination plan for the student, prior to the student's discharge or transfer, and shall give thirty (30) school working days notice to the parents, the Administrator of Special Education or human service agency. If the planned discharge will occur before the end of the school year or will interrupt a previously agreed upon length of stay as set forth in the IEP, notice will be given to the parents, the Administrator of Special Education and, where appropriate, the human service agency at the final IEP meeting or at least ninety days prior to the discharge date.
- (i) The plan shall specify the students needs, describe the student's progress in meeting the educational goals set forth in the IEP, and shall provide recommendations for follow-up services.

- (ii) The school shall explain termination procedures to the student, the parents, the Administrator of Special Education or human service agency who placed the student and shall provide a copy of the plan to the parents, Administrator of Special Education and/or human service agency.

(r) A detailed description of personnel policies:

1. Each school shall designate one person who shall have administrative responsibility over the operation of the school. Such person also may serve as the educational administrator as required under section 18.04(1) of these regulations. Private schools with more than 40 professional certified staff may have one (or more) assistant executive directors provided that the Division of Special Education agrees on the need for such a position.
2. The administrator designated under section 18.04 or designee shall at all times be on the premises of the school while the school is in operation. All staff on duty shall know who is responsible for administration of the school at any given time.
3. The school shall have available its written current personnel policies and practices. Such personnel policies shall include a description of:
 - a. Criteria and procedures for hiring, written evaluations, suspension or dismissal of any staff person, including teacher and staff evaluation forms;
 - b. The procedures for handling staff complaints; and
 - c. Provisions for vacations, holidays, leaves, sick days, and any other benefits or requirements maintained by the school.
4. The school shall have written job descriptions for all staff positions which shall be made available to staff. Copies also shall be made available to parents, if requested.
5. The school shall establish in writing a salary range and shall inform each employee of the salary range for his/her position. In no event shall any salaries be approved by the Division in excess of the maximum

salary levels established by the Massachusetts Rate Setting Commission for the purpose of establishing a rate. Fringe benefits shall be made available to full-time staff and prorated to any staff employed at least half-time.

6. The school shall submit written evidence that personnel are currently certified, licensed, or registered as required by applicable laws and regulations for providing services for the special education of the particular population typically served or to be served by such school. All teachers hired on or after September 1, 1979, shall meet the approval requirements contained in the Chapter 766 Regulations and the Regulations for the Certification of Educational Personnel, 603 CMR 7.00. Such evidence must be submitted annually for all newly hired staff members.
 7. The school shall provide orientation for all new staff to ensure an understanding of the school's philosophy, organization, program, practices and goals. The school shall describe in writing the school's program for staff orientation.
 8. The school shall describe in writing its plan for developing and delivering inservice training.
 - a. Each staff member providing direct services to students must participate in a minimum of two hours of staff development each month.
 - b. The school shall describe in writing its arrangements with any professional training program, including a description of student intern responsibilities and supervision of student interns by the college and the school.
 9. The school shall describe in writing its plan for using volunteer services. Volunteers shall be chosen for their ability to meet the needs of the students enrolled and shall be provided appropriate orientation, training, and supervision.
 10. The school shall describe in writing its policies and practices regarding equal employment/ educational opportunities/ affirmative action in regard to race, color, creed, national origin, sex, and handicap.
- (s) A narrative description of provisions made for medical, nursing, and infirmary care of students;
1. The school shall have a licensed physician available for consultation.

2. The school shall have a registered nurse or a licensed practical nurse available as deemed necessary by the Division depending upon the health care needs of the school population.
3. The school shall have available either a physician or a registered nurse who shall aid in the development of the health care policies for the school.
4. The school shall have a written health care policy and procedures manual which shall be made available to all staff. The health care manual shall be approved by the health care consultant and shall include all applicable policies and procedures.
5. The school shall have written policies and procedures for emergency first aid and care including:
 - a. Training of all direct service staff in emergency first aid and cardiopulmonary resuscitation procedures by a certified instructor.
 - b. Adequate first aid supplies, including but not limited to bandaids, gauze, adhesive tape, hydrogen peroxide or other cleaning solutions and ipecac shall be maintained and stored in a secure place, out of the reach of students. First aid supplies should be located and easily accessible in each major activity area.
 - c. Written procedures for providing first aid shall be kept with the first aid supplies.
 - d. The telephone number of the fire department, police station, poison prevention center, hospital emergency room and ambulance service serving the school shall be posted in both living quarters and educational facilities.
 - e. The procedures to be followed in the case of illness or emergency, including transportation methods and notification of parents.
 - f. The procedures to be followed in event of fire or other emergency.
 - g. A procedure for informing parents of any first aid administered to their child or any injury or illness which required care other than first aid.
 - h. The procedures to be followed in the case of illness or emergency if the parents cannot be reached.

6. The school shall describe in writing its procedures and policies regarding the administration of medication:
 - a. No medication shall be administered to a student without written authorization from a parent. Such authorization shall be renewed annually.
 - b. No prescription medication shall be administered to a student without the written order of the physician prescribing the medication for that student. The school shall be responsible for seeing that medication is administered in accordance with M.G.L. C.71, s.54B.
 - c. Any change of medication or dosage must be authorized by a new order from a physician.
 - d. A written record of the administration of prescribed medication to students shall be maintained.
 - e. All medicine shall be kept in a locked, secure cabinet and labeled with the student's name, the name of the drug, and the directions for its administration. The school shall dispose of or return to the parents any unused medication. Medications must be delivered to the school by a responsible adult in a container labeled by the physician or pharmacist. Provision must be made for refrigerating those medications which require it.
 - f. The school shall have a written policy regarding the amount of medication to be kept on the premises at any one time for each student receiving medication.
 - g. A review of medications administered to a student shall be incorporated into the student's quarterly progress review.
7. The school shall describe in writing a plan for the preventive health care of students:
 - a. The school, in cooperation with the student's parents and/or human service agency which is responsible for payment, shall make provision for each student to receive a comprehensive medical and dental examination annually. The school shall require a written report from the physician(s) giving the results of the examination and any recommendation and/or modification of the student's activity.

- b. The school shall, in cooperation with the student's public school, develop a plan to ensure that vision, hearing, postural and other required screenings are conducted in accordance with the Chapter 766 Regulations and M.G.L. C.71, s.57.
 - c. The school shall have a policy and procedure for assuring that no student or staff member who has a reportable communicable disease is attending school and for notifying all parents when any reportable communicable disease has been introduced into the school. The local board of health must be notified in accordance with M.G.L. C.71, s.55A.
 - d. The school shall provide a locked, secure cabinet to keep all toxic substances, medications, sharp objects and matches (other than those available to students with permission to smoke) out of the reach of students. Medications and medical supplies should not be locked in the same cabinet as other toxic substances. Toxic substances must be labeled with contents and antidote. The phone number for the nearest poison center must be posted clearly.
 - e. Where appropriate, the school shall provide or arrange for the provision of family planning information, subject to any applicable state or federal legislation.
 - f. The school shall require that all students have necessary immunizations as required by the Department of Public Health.
8. The school shall describe in writing its policy for protecting a student from exposure to foods, chemicals, or other materials to which they are allergic, as stated by their physician/medical assessment.
 9. The school shall describe in writing procedures and staff training relative to the reporting of suspected child abuse or neglect to the Division of Special Education and to the Department of Social Services as required by M.G.L. C. 119, s. 51A and B.
 10. The school shall have on file a signed consent form for treatment of acute medical problems. The consent must be signed by the parents and be updated annually.

11. In the absence of an emergency or epidemic of disease declared by the Department of Public Health, the school shall not require any student to receive medical treatment when the parents object thereto on the ground that such treatment conflicts with a religious belief.
- (t) The school shall establish and post a written plan detailing procedures for meeting potential emergencies. The plan shall include procedures for:
1. The assignment of personnel to specific tasks and responsibilities in emergency situations;
 2. Instructions for the use of alarm systems and signals;
 3. Systems for notification of appropriate persons;
 4. Specification of evacuation routes and procedures;
 5. The conduct of emergency drills for staff at least quarterly under varied conditions in order to:
 - a. Assure that all personnel on all shifts are trained to perform assigned tasks;
 - b. Assure that all personnel on all shifts are familiar with the use of the firefighting equipment in the facility; and
 - c. Evaluate in writing the effectiveness of emergency plans and procedures.
 6. The conduct of evacuation drills which include actual evacuation of students to safe areas during at least two drills each year on each shift. Sufficient drills must be held each year to ensure that all students are able to evacuate the building safely.
 - a. The school shall take special care to help all students to understand the nature of such drills.
 - b. The school shall make special provisions for the evacuation of any mobility impaired student in the facility.
 - c. The school shall keep a written log of each such evacuation drill detailing such things as the date, the time elapsed, the students and staff that participated, and any witnesses.

7. Provision of a telephone number for students and staff to call and a system for emergency assistance to students while they are away from the facility and during the time that the school is in session. The school also shall be responsible for providing immediate backup that may be necessary as the result of any emergency.
 8. Maintenance of an ongoing safety program which shall include, but not be limited to, investigation and recording of all accidents and recommendations for accident prevention. The school shall send copies of such investigations, records, and recommendations to the appropriate Regional and Central Offices of the Division.
 9. Water safety procedures which shall be in accord with the requirements of the local and/or state health departments and Division requirements for appropriately certified personnel and which shall provide for:
 - a. Insuring the students' safety when participating in recreational and/or therapeutic water activities; and
 - b. A system to secure water recreational areas when not in use and to prevent unauthorized use by students;
 10. Procedures for reporting and handling situations involving students who have run away.
- (u) Any other information that is authorized by the Central Office of the Division pursuant to policy statements or directives issued by the Division of Special Education in furtherance of these regulations or in furtherance of policy directives from the Board of Education.
- (3) Department Action on Applications. The Division shall review each application for approval submitted pursuant to these regulations and consult with the appropriate human service agencies. Such review shall include site visits, interviews, and inspection of documents required to be kept by the applicant. Following such review, the Division shall issue a written notice which shall be hand delivered or mailed to the school by certified mail, return receipt requested, which either denies the application or grants one of the following types of approval.
- (a) Types of Approval.
1. Temporary Approval shall be granted to a new program that the Division has determined complies with these regulations but which does not yet have a rate promulgated by the Massachusetts Rate Setting

Commission. Temporary approval may be granted to a program before such program has hired all staff or purchased all equipment and materials, provided, however, that the name and qualifications of the educational administrator must be made available to the Division and provided further that the Division receives and verifies all of the information concerning staff, equipment, and materials required by these regulations before students are admitted to the program. A program with temporary approval may begin to review referrals but is not eligible for the actual placement of special education students under Chapter 766 until a rate has been set by the Rate Setting Commission and the Division has granted either provisional or full approval.

2. Provisional Approval shall be granted to an existing program if, at any time, the Division determines that a school does not comply with all applicable requirements, provided that the health and safety of the students is protected and the school demonstrates the ability to carry out the IEPs of the students. In no case, however, will a school be allowed to operate without the certificates or licenses referred to in section 18.02(2) (b). The Division shall provide the school with a written notice of the approval requirements that the school has not met and shall establish a time limit within which the school must meet such requirements. In no case shall this time limit exceed six months duration from the written notification of deficiencies. Not less than one month before the agreed upon time limit under the provisional approval, the Division shall monitor the school to determine progress in meeting the previously cited requirements and to ensure that the school continues to meet all other requirements of these regulations. If additional non-compliance areas are identified at this time, the school must correct these deficiencies within the agreed upon timeline but not to exceed thirty (30) days.
3. Full Approval shall be granted to a program when the Division is satisfied that the program complies with these regulations. This approval will be valid for one year, and may be renewed on an annual basis, for up to two subsequent years subject to 18.02(4). The Division will conduct monitoring visits on an ongoing basis throughout the approval term.

- (b) If the Division intends to deny an application, grant a provisional approval or revoke approval, it shall send the school written notice containing a statement of the specific reasons therefore and the steps that must be taken to come into compliance, and shall afford the school an opportunity for

a hearing before the Division to determine if there is probable cause to deny, revoke, or grant provisional approval. The school shall send written request for a hearing to the Central Office of the Division within ten (10) working days from the receipt of the notice. The Division shall hold a hearing within ten (10) working days from the receipt of the request for a hearing, and shall issue a written decision within fourteen (14) working days from the completion of the hearing. The decision shall be hand delivered or mailed to the school by certified mail, return receipt requested. If the school wishes to appeal from the decision of the Division, such appeal shall be governed by section 18.02(7) of these regulations.

- (4) Annual Renewal of Application. Full approval under these regulations shall be valid for one year from the date of issuance, unless revoked or made provisional. The approval may be renewed for up to a maximum of two subsequent one-year periods, if the school submits an amendment to the original application which is approved by the Division. Such amendment shall include any additional information necessary to make the previous application current and accurate. The submission of the amendment and additional information shall constitute an application for reapproval and shall be submitted at least 60 days prior to the expiration of the prior approval. In the event of delay on the part of the Division, the prior approval remains in effect until the renewal is granted. The Division shall make an annual on-site visit before acting on any such application for reapproval.
- (5) Revocation of Approval. The Central Office of the Division may revoke the approval of a private school if the school fails to comply with the provisions of these regulations. Notification of revocation of approval shall be hand delivered or mailed to the school by certified mail, return receipt requested. The procedures in section 18.02(3) (b) shall be followed.
- (6) Closing of Intake.
 - (a) The Central Office of the Division may close intake at a private school for just cause. The reasons for closing intake may include:
 - 1. Violation(s) of these regulations or Chapter 766 Regulations;
 - 2. The provision of false or misleading statements or reports required under these regulations;

3. Failure to respond to written requests for information from the Division. The Division may consider closing of intake for failure on the part of a private school to respond to requests for information from other appropriate state agencies, provided such requests for information are in writing and the Division is provided with copies of such requests;
 4. Indications of improper financial practices or financial instability; and/or;
 5. Any actions or omissions by the school that, in the opinion of the Division, seriously impair the school's ability to provide the program and services described in its application, or its ability to ensure the health and safety of the students.
- (b) Upon determination that it is necessary to close intake at a private school, the Division shall notify said school in writing by certified mail, return receipt requested, of such determination stating the reasons for such determination as well as the necessary corrective action the school must take in order to reopen intake. In no event, however, shall the Division close intake for more than sixty days under the provisions of this section without a full review of the approval status of the school.
- (c) In the event that a school chooses not to appeal a determination to close intake, the Division shall transmit such determination to all Regional Branch Offices and human service agencies along with corrective action measures and the date intake is expected to be reopened. Upon verification that corrective action has been completed, the Division shall notify all Regional Branch Offices and human service agencies that corrective action has been completed and that intake has been reopened.

(7) Appeal Process.

- (a) A private school that wishes to appeal a decision of the Division to close intake pursuant to section 18.02(6) or an adverse decision concerning its approval status shall file a notice of appeal with the Commissioner of Education within ten (10) working days from its receipt of the Division's decision. The school also shall send a copy of the notice of appeal to the representative of the Division who issued the decision that is the subject of the appeal. The notice of appeal shall contain:
1. A copy of the Division's decision;
 2. A statement of the specific reasons for the appeal; and
 3. A response to each of the reasons provided by the Division for its action.
- (b) The Commissioner or the person appointed as the hearing officer shall review the statement of reasons for the action of the Division and the response of the private school. The hearing officer shall have the authority to: request additional documentation from either party to the appeal; limit the appeal to a review of the written documents with the agreement of both parties; or convene a hearing at which each party may make an oral presentation. Any such hearing shall be informal in nature and not subject to the rules of adjudicatory proceedings pursuant to M.G.L. C. 30A.
- (c) Pending receipt of the hearing officer's decision, the action of the Division shall remain in effect.
- (d) A written decision shall be issued within twenty (20) working days from either the receipt of the written documents or the conclusion of the hearing, whichever occurs last. The decision shall be sent to the school, the Central Office and each Regional Branch Office of the Department.
- (e) Upon receipt of the decision, the Division shall notify all public schools and human service agencies with students placed in the school and all public schools and human service agencies that have indicated that they wish to place students in the school.

- (f) If the decision upholds the Division's decision, the public schools and human service agencies with students placed in the school shall find appropriate alternative placements for those students.

(8) Alternative Methods of Compliance (Waivers).

- (a) The Central Office of the Division may, upon written request, waive any requirements contained in these regulations and allow an alternative method for compliance if the applicant provides clear and convincing evidence that the alternative method proposed by the school or program in question meets the intent of the regulations. The evidence necessary shall include:
 - 1. Written explanation as to how the alternative method will comply with the intent of the requirement for which a waiver is requested.
 - 2. Expert opinion, if deemed necessary by the Division, which demonstrates that the alternative method will comply with the intent of the requirement for which a waiver is requested.
- (b) The Division may not waive any regulations of any other state or local agency (e.g. fire, health, safety, Office for Children, school committee).

18.03 INFORMATION, NOTIFICATIONS, AND POSTINGS REQUIRED BY THE DEPARTMENT

- (1) Availability of Information to the Department and Public Schools. Upon request of an employee of the Department, the school shall make available to the Department any information required to be kept and maintained under these regulations. The school shall make available any other information authorized by the Central Office of the Division, reasonably related to these requirements. Included in this section is such information as: student and staff attendance, census and vacancy reports and staffing patterns.
- (2) Availability of Regulations. Each private school program shall have a copy of these regulations and the Chapter 766 Regulations on the premises and make them available for inspection to any person upon request.

- (3) Availability of Statement of Purpose. Each private school program shall provide a copy of the program's ever current statement of purpose to each public school referring a student and to said student's parents upon request.
- (4) Visits to Determine Compliance. In order to determine compliance with these regulations and Chapter 766 Regulations, the following persons may visit the private school:
 - (a) Department of Education employees and consultants to the Department of Education;
 - (b) School Committees or their designees; and
 - (c) Human Service Agencies who have placed students in the school.
- (5) Prior Written Notification Requirements. Each approved private school program shall provide written notification to and obtain the approval of the appropriate Regional Branch Office prior to the occurrence of the following changes:
 - (a) Any substantial change in policy, program, staffing, or services from that stated in an approved application;
 - (b) Any change in location of the school or expansion of the facility;
 - (c) Any change in ownership of the school. An approval of a school shall be transferable from one owner to another if the school provides to the appropriate Regional Branch Office documentation that the school's facilities, personnel, licenses/permits, policies and program components remain the same as when originally approved and the school has secured a new license from the Office for Children consistent with its regulations. This documentation shall be provided prior to the actual change in ownership and the Regional Branch Office shall confirm the transfer of approval, if these requirements are met.
 - (d) Only written notification is required prior to any change in the person designated by the owner or the governing body as having responsibility for administration of the facility.
- (6) Immediate Notification Requirements. Each approved private school program shall immediately notify, by telephone and by letter, the appropriate Regional and Central Offices of the Division in the event of:
 - (a) The death of any student while such student is enrolled in the school. The school also shall immediately notify the student's parents, the public school or human service agency and the Office for Children;

- (b) Any injury to or any previously unidentified disorder or illness of any student which occurs during the hours while such student is in school and which requires hospitalization;

1. The school also shall immediately notify the student's parents, the public school or human service agency and the Office for Children;
2. If the student's physician specifies that the student will require in-patient hospitalization for more than fourteen days, the requirements of paragraph 502.7 of the Chapter 766 Regulations become applicable;

- (c) Any action taken by any federal or state agency or local board which might jeopardize the status of any certificate, license, or approval issued; and

- (d) Any legal proceeding brought against it or any of its employees if such proceeding arises out of circumstances related to the care or education of students in the school or to the continued operation of the school. The term "legal proceeding" as used in this section shall mean any act taken pursuant to a state or federal statute as well as the commencement of any administrative or judicial action.

- (7) Posting Requirements. Each private school program shall conspicuously post, in an area accessible to visitors and employees in one central location within the building used for administration, the following items:

- (a) Notification of the current approval or intake status issued by the Division;
- (b) The current tuition rate for students as established by the Massachusetts Rate Setting Commission;
- (c) An organizational chart showing the administrative structure of the school, including the lines of authority and staff assignments;
- (d) First aid and emergency procedures including telephone numbers; and
- (e) A statement specifying the location of the documents that grant authority to operate the school, including documents that fully identify ownership. Corporations, partnerships, or associations shall maintain a file which is available for public inspection and contains, where applicable, the names of officers and boards of directors, the charter, partnership agreement, constitution, articles of organization and by-laws.

- (8) Posting of Emergency Procedures. In addition, first aid and emergency procedures including telephone numbers shall be conspicuously posted within each building.

18.04**EDUCATIONAL PROGRAM REQUIREMENTS FOR DAY AND RESIDENTIAL SCHOOLS**

- (1) Designation of Educational Administrator. The school shall designate an educational administrator to carry out the educational program of the school and to assure that these requirements are fulfilled. The designated administrator may be the same person required under section 18.02(2) (r)1. Anyone hired as the educational administrator must possess Massachusetts certification as a Special Education Administrator or an administrator in the major area of the students' special education needs for which the school conducts an educational program and must have administrative experience. Where the educational administrator has served in that capacity in the same program and that program has had full approval since September 1, 1979, that person may remain in that same position. Should the educational administrator transfer to another program, certification will be required and a newly hired person for that program must meet the certification requirements.

- (2) Daily Duration and Number of Days Programs Are to Be Provided. The school shall provide an average annual minimum of five hours of instruction daily for elementary level programs and five and a half hours of instruction daily for secondary level programs. The program shall be conducted for at least the same number of days as in the public school year as determined by the Board of Education, exclusive of week-ends, holidays, and vacations.

- (3) Requirements for Special Education and Related Services. Students in need of special education as provided through program prototypes 502.5, 502.6, 502.7(a), 502.7(b), 502.8(c), or 502.9 of the Chapter 766 Regulations shall be provided with special education and related services as required by their IEPs and as approved by the parents.
 - (a) Such special education services may include all those which the various categories of certified or approved special education teachers are professionally qualified to provide, including:
 1. Self help skills, activities of daily living;
 2. Motoric activities, physical education, adaptive physical education;
 3. English, reading, writing, language, communication skills;
 4. Math, quantitative skills and concepts;
 5. Vocational education programs which may consist of any or all of the following:
 - a. Vocational diagnostic program;

- + b. Courses and programs in pre-vocational and vocational training;
 - + c. Site visits, occupational opportunities, work study;
 - + d. Vocational and career counseling;
 - + e. Rehabilitation counseling; and
6. Other curriculum areas such as social studies, art, music, science and those required for graduation by the local school committee approving the private school in accordance with M.G.L. C. 76, s. 1 as well as other applicable statutes or regulations of the Board of Education.
- (b) Related Services directly required to achieve the short term objectives and long term goals specified in the student's IEP shall be provided to the student and the student's parents, including:
- 1. Speech and language therapy;
 - 2. The services of a physician in prescribing or referring a student for physical and occupational therapy;
 - 3. Physical therapy;
 - 4. Occupational therapy;
 - 5. Peripatology;
 - 6. Nursing services;
 - 7. Parent-child instruction, training, and support which may include, but is not limited to:
 - a. Making the professional staff (e.g. teachers, counselors, social workers) available for individual conferences with parents upon parental request and at a mutually convenient time;
 - b. Developing a visitation plan and encouraging the parents' continued interaction with their child in accordance with the provisions of the IEP; and
 - c. Assisting the parents in planning for their child's return home or transfer to another community environment when appropriate;

8. Social and psychological services provided by a school adjustment counselor, social worker, psychologist or psychiatrist, limited to the following:

- a. Group sessions;
- b. Individual consultation about an identified problem;
- c. Crisis intervention consisting of short term casework;
- d. Individual counseling; and
- e. Consultation with teachers.

(c) A request for any service in addition to those listed above, and any specialized materials or equipment beyond that prescribed in accordance with paragraph 507 of the Chapter 766 Regulations, and which is considered essential to the implementation of the IEP, shall be referred by the student's local special education administrator to the appropriate agency of the Executive Office of Human Services, and if not available, shall be referred to the interagency children's services team as defined in M.G.L. C. 28A, s. 6A.

(4) Discipline and Guidance. Discipline and guidance shall be consistent with established policies and based on an understanding of the individual needs and development of a student, and the provisions of the IEP. Discipline shall maximize the growth and development of the students and protect the group and individuals within it, and shall insure that:

- (a) No student shall be subjected to cruel, hazardous or abusive treatment, humiliation or verbal abuse.
- (b) No student shall be subjected to corporal punishment.
- (c) No student shall be denied food as a form of punishment.
- (d) No student shall be secluded in a locked room.
- (e) No student shall be denied opportunities for daily physical exercise or recreational activity for an extended period of time, as appropriate to the age and interests of the student.
- (f) No student shall be denied access to water, and bathroom facilities shall not be unreasonably restricted.

(5) Classroom Materials.

- (a) The school shall provide adequate textbooks or individual materials during an instructional period so that each student may have his/her own. Specialized materials including vocational program materials shall be based upon demonstrated need as recommended by IEPs and shall be purchased in the most economical manner. Where appropriate, there shall be:
1. Bulletin boards, chalk boards and display areas in each classroom;
 2. Adequate individual desks, chairs and tables so that each student has an individual work space; and
 3. Space for each student to store his/her school supplies, books, papers, and work.
- (b) The purchase of school furniture and specialized materials and equipment shall be limited as necessary for the education of the student. The purchase of items costing over \$500 per item and required to implement the student's IEP must be approved in advance by the Division. The school must solicit competitive bids for those items costing over \$2000.

(6) Student/Teacher Ratios.

- (a) The appropriate Regional Branch Office may approve student/teacher ratios of from six to eight students to one teacher with or without an aide. Student/teacher ratios above or below these levels must be approved by the Central Office of the Division. The Division shall make the final determination based upon but not necessarily limited to the following: need, student and staff scheduling, requirements of IEPs, the aggregate student to staff ratio, and the utilization of support staff including teacher aides.
- (b) All permanent staff positions, either full or part-time, will be reviewed on a full-time equivalent basis. Staff/student block schedules shall be submitted for all programs.
- (c) Individuals acting in the capacity of teachers or support staff who are receiving undergraduate or graduate credit for the intern/teaching experience may not be considered as staff of the facility for the purpose of meeting required ratios. The only exception is for teachers or support staff who have been full time employees of the school for at least one year prior to the commencement of their internship, and where such internship is fulfilling the practicum requirement under the 603 CMR 7.00 Regulations for the Certification of Educational Personnel.

(7) Teacher Qualifications and Health Requirements.

(a) Teachers shall have appropriate prior education and experience as follows:

1. All instructional staff hired must be certified, when applicable, with an appropriate special education certificate for the type of students for which the school conducts an educational component in accordance with the Chapter 766 Regulations and the Regulations for the Certification of Educational Personnel 603 CMR 7.00. The teachers serving in these capacities within the same school prior to September 1, 1979 may remain in such positions.
2. Related service staff such as psychologists, social workers, etc., must be appropriately certified or licensed in their professional areas.

(b) All school personnel shall be subject to the tests for tuberculosis applicable to public school personnel, pursuant to M.G.L. C.71, s.55B.

(8) Personnel Training, Supervision, and Evaluation.

(a) The school shall provide a minimum of two hours a month of formal inservice training to all personnel providing services to students. Formal inservice training shall be appropriate to the needs of the students and the approved facility, publicly stated in advance, include staff input and subject to the review of the Division. Formal academic training of individuals may not be used in lieu of this required inservice training component. However, collaboration between institutions of higher education, public schools, and private schools is encouraged for training purposes.

(b) The school shall supervise the performance of all personnel. Personnel shall be formally evaluated annually by the educational administrator. Such evaluations shall be maintained in writing in the personnel records and a copy of the written evaluation shall be given to the employee being evaluated.

(9) Educational Plans and Reviews.

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- (a) For each student enrolled, the school shall have on file a current IEP written by the F M, parents and local Administrator of Special Education. If the private school is having difficulty obtaining an IEP, the school should contact the appropriate Regional Branch Office of the Department of Education.

- (b) The school shall assign an educational case manager for each student. The case manager has the responsibility to maintain regular contact with the public school liaison and the parents, informing them about the student's progress and assuring that the provisions of this section are carried out.
 - (c) The school shall carry out each element of the IEP specified by the public school.
 - (d) The school shall inform the local Administrator of Special Education when a modification to an IEP is required and shall carry out the jointly agreed upon modification. Prior to any modification in an IEP, the school shall meet with and have the written consent of the parents, the TEAM, and the local Administrator of Special Education. The modification shall be in the form of a written amendment, with one copy attached to the IEP in the student's record and one sent to the Regional Branch Office.
 - (e) At least every three months, the school shall submit to the student's parents and the local Administrator of Special Education a behaviorally specific written quarterly report of the student's progress toward achieving established objectives and criteria set by the TEAM and the local Administrator of Special Education for the movement of the student to a less restrictive program prototype.
 - (f) The school shall inform, in writing, the student's parents and the local Administrator of Special Education when such student has met the criteria for movement to a less restrictive environment or has made progress toward that end.
- (10) Provisions for the Transition of Students from Private Schools into Public Schools.
- (a) The purpose of these provisions for the transition of students from private schools into public schools is to maximize opportunities for movement to less restrictive educational programs. Programs and activities established under this section should serve as a bridge between the private day or residential school and the public school setting.
 - (b) The public school together with the private school and the parents will determine, during the annual review of the student's program or during the quarterly progress review (paragraphs 333.1, 337.0, and 505.3 of the Chapter 766 Regulations), if the student is ready to be returned to the public school or if a period of transition is needed. If a transition period is required, the student will be allowed to participate in the public school setting for certain educational programs or activities as determined by the evaluation TEAM, and will remain in the private school for the remainder of his/her program. Such a transitional program shall be

conducted for no more than one school year from the date of the approval of the transitional program.

- (c) A transitional program for a student placed in a private school located outside of his/her community may require attendance at a public school other than that of the student's home community.
 - (d) A student participating in a transitional program shall have the approval of both the public school system in his/her home community and the public school system which the student will be attending if different, and his/her parents.
 - (e) Prior to placement in a transitional program, approval must be received from the appropriate Regional Branch Office of the Department in accordance with paragraph 504 of the Chapter 766 Regulations.
 - (f) The financial arrangement for the transition program shall be made by agreement with the private school, the public school system of the student's home community, and the public school system which the student will be attending. If the student is spending more time in the public school than in the private school, the public school may pay the private school on a fee for service basis for the services provided to the individual student.
 - (g) Special education students in transitional programs shall be reported, for Chapter 70 purposes, in the prototype in which they are being served. Students spending more than 50% of their time in the private school will be reported as a 502.5 (day) or 502.6 (residential) prototype. Students spending more than 50% of their time in the public school will be reported as a 502.2, 502.3, 502.4, or 502.4(i) prototype. Services provided by the private school will be contracted for on a fee for service basis under paragraph 503.0 of the Chapter 766 Regulations.
- (11) Students Records. The school shall maintain individual student records for each student, in accordance with the school's plan to comply with the Massachusetts Student Records Regulations. The records shall be legible, dated, signed by the individual making an entry, and continually updated. The records shall contain the following information:
- (a) A face sheet which identifies the student by the following information:
 - 1. The name, date of admission, date of birth and primary language of student;
 - 2. Custody or guardianship status of student;

3. The parents' names, addresses, telephone numbers, and home language;
 4. The name, address, and telephone number of a person other than the parents to be contacted in an emergency when the parents cannot be reached;
 5. The student's sex, race, height, color of eyes, color of hair, and identifying marks;
 6. Any medical condition, including any allergies significant to the student's well-being, and date of last physical examination;
 7. The responsible public school and the name of the public school liaison;
 8. Student's source of tuition; and
 9. Date of discharge and student's location or school to which discharged.
- (b) A copy of the IEP developed by the TEAM, the name of the liaison, the name of the educational case manager, and the school's plan for carrying out each element of the student's plan;
 - (c) A copy of the quarterly progress reports and any modifications to the IEP;
 - (d) A copy of the student's termination or discharge plan;
 - (e) Health records including reports and/or documentation of physical examinations including dates and findings on the following: allergies, screening test results, ongoing medical care, first aid and emergency care, dental care, administration of medications, communications to and from parents, parental consent for special activities and for emergency medical treatment;
 - (f) The results of any evaluations and/or assessments conducted by the school or received from the public school or other appropriate agencies;
 - (g) Pertinent correspondence concerning the student;
 - (h) Information regarding the use of restraint, which includes: type, duration, date, time, circumstances and authorizing signature;
 - (i) A recent picture; and
 - (j) Log of access consistent with the Massachusetts Student Records Regulations.

(12) Vehicle and Driver Requirements When Private School Owns, Contracts, or Uses Vehicles.

- (a) The school shall ensure that any vehicle used for transportation, and the drivers thereof, conform to the appropriate state and federal requirements pertaining to equipment and licensing and to Chapter 9 of the Chapter 766 Regulations.
- (b) The school shall ensure that any vehicles transporting nine students or more conform to all applicable Massachusetts School Bus Laws (Chapter 90 of the General Laws), and that drivers of these buses possess the necessary license to drive such vehicles.
- (c) The school shall ensure that any vehicles transporting eight students or less conform to all applicable standards established for Non-Class II vehicles (Chapter 90 of the General Laws).
- (d) The Regional Branch Office may approve one vehicle for every 20 residential students and one vehicle for every 30 day students in a school. The Central Office may approve additional vehicles when there is adequate justification. Unapproved vehicles may not be included in cost reports for the purpose of establishing a rate. The Division will make the final determination.
- (e) Student transportation, exclusive of travel to and from school, for scheduled uses such as field trips, community living skills, etc. shall be limited to station wagons, vans, buses, or public transportation facilities.
- (f) Emergency transportation may be purchased at a per mile rate and provided through vehicles with adequate insurance which are owned by staff.
- (g) Transportation for staff for job related travel may be reimbursed at the current rate of reimbursement to employees of the Commonwealth of Massachusetts.
- (h) The school shall use no school owned, contracted or staff member's vehicle to transport students unless it has at least the minimum amounts of liability insurance that the school committee of the city or town in which the private school is located requires for vehicles transporting public school students, but in no case less than:
 - 1. Injury per person: \$100,000
 - 2. Injury per accident: \$300,000
 - 3. Property damage: \$5,000.

- (i) An aide shall be provided on all vehicles which transport one or more students ages three or four or when such an aide is deemed necessary by the evaluation TEAM.

(13) Transportation Safety.

- (a) The school shall not allow the number of students riding in a contracted, school owned or staff member's vehicle for a school related activity to at any time exceed the number of seats therein, and operators shall not drive vehicles unless all students are seated.
- (b) Suitable safety carriers, restraints or seat belts shall be provided for and utilized by each student, driver and attendant. All car restraints shall meet current federal and state safety standards.
- (c) When more than nine students are being transported, an attendant other than the driver is required.
- (d) When transporting students, any sharp, heavy or potentially dangerous objects that are transported shall be secured.
- (e) The school shall ascertain the nature of any need or problem of a student which may cause difficulty during transportation such as seizures, a tendency toward motion sickness, or disabilities, and shall communicate such information to the operator of any vehicle transporting students.
- (f) Students shall be released by the driver of a vehicle only to designated persons authorized to receive such students.
- (g) The school shall provide an inservice training program for operators of vehicles owned or contracted for by the school and carrying special education students, to instruct such operators on the needs of the students they are transporting and to equip them to meet those needs.
- (h) The school shall notify the Division of Special Education, parents, public school, or human service agency immediately in the event of an accident. In addition, the school shall send written notification to each of the above within forty-eight hours.

18.05

REQUIREMENTS FOR DAILY CARE OF STUDENTS IN DAY AND RESIDENTIAL SCHOOLS

(1) Supervision of Students.

- (a) The school shall at all times provide appropriate supervision of students while they are engaged in any school related activity on or off school grounds.

(b) Each program shall develop and implement a written staffing plan for the employment of child care workers. This plan shall include, but is not limited to:

1. A rationale describing the need for such child care workers;
2. A detailed description of the duties and responsibilities of such child care workers;
3. A detailed work schedule for child care workers including days and hours worked and the students for whom they will be responsible;
4. A detailed description of how the school will provide child care services in the absence of child care workers due to illness, position vacancy, emergencies, or other unexpected absences of child care workers.
5. A detailed rationale justifying the child care worker to student ratio requested by the school. Such rationale should include the ages, capabilities, behavioral and educational needs of the students, and other information as may be required due to the respective goals of individual students and/or programs.

(2) Student to Child Care Worker Ratio. The appropriate Regional Branch Office may approve a student to child care worker ratio not lower than 4:1 nor greater than 6:1 during non-education waking hours and not lower than 6:1 nor greater than 8:1 during sleeping hours. Student to child care worker ratios above or below these levels must be approved by the Central Office of the Division. The Division shall make the final decision on alternative ratios. In rendering such decisions, the Division will consider, but is not limited to, the following:

- (a) The recommendations of the Regional Branch Office;
- (b) The recommendations of the Office for Children with respect to required student to child care worker ratios necessary for licensure by the Office for Children;
- (c) The requirements of IEPs;
- (d) The current approval status of the school;
- (e) The most current monitoring data available.

(3) Child Care Worker Staff Development and Training.

Each program shall develop and implement with staff input a detailed written plan for staff development and inservice training of all child care workers. This training plan shall be ongoing in nature and

provide for a minimum of two hours of formal training per month and shall include, but is not limited to, the following:

- (a) Procedures for orienting new child care workers to the role and purpose of the school;
 - (b) Information and discussion on the nature and needs of the students enrolled in the school;
 - (c) The role of the child care worker in the growth and development of students and the relationship of this work to the IEPs of students;
 - (d) Procedures to be followed in the event of an emergency;
 - (e) Basic first aid and CPR;
 - (f) Techniques for dealing with disruptive and violent behavior including skill training on the proper use of non-violent restraint; and
 - (g) Other topics that may be relevant to the operation of the school.
- (4) Supervision of Child Care Workers. Each program shall provide ongoing and regular supervision of all child care workers by a professional staff person who has supervisory and/or administrative responsibility within the school. Such supervision shall include, but is not necessarily limited to:
- (a) Regularly scheduled conferences with supervisors to plan and share information relative to the needs of individual students;
 - (b) Regularly scheduled conferences with teachers and/or other educational personnel to ensure that there is coordination between all components of an individual student's program;
 - (c) Regular review and discussion of ongoing case logs.
- (5) Clothing Grooming, and Hygiene.
- (a) Clothing. The school shall determine as part of its intake process that parents or guardians provide each student with adequate, clean, appropriate, fashionable, and seasonable clothing as required for health and comfort. The school shall make provisions where appropriate with various state agencies to assure that students they are responsible for placing in the school are provided with adequate, clean, appropriate, fashionable, and seasonable clothing, subject to the following conditions:
 - 1. No student shall be required to wear a uniform that identifies the student as a resident of a particular school.

2. Each student shall have his/her clothing identified for personal use, and such identification shall be inconspicuous.
3. For students whose clothing is provided by a state agency, the school shall provide such students the opportunity to participate in the selection of their own clothing.

(b) Grooming and Hygiene. The school shall determine as part of its intake process that parents of students provide the necessary articles for personal grooming and hygiene. The school shall make provisions where appropriate with various state agencies to assure that students they are responsible for placing in the school have the necessary articles for personal grooming and hygiene, subject to the following:

1. The school shall instruct and assist each student in developing good grooming habits.
2. The school shall provide students with the opportunity to brush their teeth after meals.
3. The school shall conduct a toilet training program for all students who are not toilet trained unless otherwise indicated in the student's IEP.
4. In addition to the above, residential schools shall:
 - a. Ensure that each student bathes or showers frequently enough to maintain proper hygiene in a private bath or shower. The school shall provide students with assistance and/or supervision in bathing if they are unable to perform this function by themselves.
 - b. The school shall ensure that each student in the custody of a state agency, has his or her own articles necessary for personal grooming and hygiene.
 - c. The school shall assist each student in learning good grooming practices.
 - d. The school shall encourage each student to brush his or her teeth at least twice daily.
 - e. The school shall make arrangements for hair cutting and styling, in accordance with the wishes of the student and parents and consistent with good health practices.

- + (6) Religious Services. Residential schools shall make available opportunities for students to voluntarily participate in religious services, in accordance with individual preferences.
- + (7) Recreational Services. Residential schools shall describe in writing their plan for meeting the recreational needs of the students served, including the use of community recreational resources where appropriate.
 - + (a) The school shall provide or arrange for individual and group recreational programs appropriate to the age, interests and needs of each student.
 - + (b) The school shall provide a recreational program which provides for free, unplanned time for students to pursue individual interests, with supervision as required for the protection of the student.
 - + (c) The school shall assign responsibility for the recreational program to a designated staff person(s).

(8) Food and Nutrition.

- + (a) The school shall, where appropriate, provide a nourishing well-balanced diet to all students.
- + (b) Residential schools shall provide at least three meals daily, at reasonably appropriate times, which constitute a nutritionally adequate diet.
 - + 1. The school shall prepare and serve meals in a manner and amount as appropriate to the nutritional needs of each student, including special dietary needs, consistent with applicable state and federal regulations.
 - + 2. No student shall be denied, nor unreasonably delayed, a meal for any reason other than medical prescriptions or clinical plan. Meals shall not be withheld as a form of punishment under any circumstances.
 - + 3. The school shall encourage students to eat a well balanced diet, but no student shall be force fed or otherwise coerced to eat against his/her will except where medically prescribed.
 - + 4. The school shall serve meals to students which are substantially the same as those served staff, unless age differences or special dietary needs require differences in diet.
 - + 5. The school shall allow students to eat at a reasonable, leisurely rate.

+

6. Staff shall be present to assure that each student receives adequate amounts and variety of food.
- (c) Schools that serve meals to students shall prepare written menus for each week and shall maintain copies of menu plans for typical weeks. Menus shall be developed by staff possessing an understanding of the nutritional needs of students.
 - (d) Schools shall provide or arrange for nutritional mid-morning snacks for students where appropriate.
 - (e) Nutritional Requirements.
 1. Schools that serve meals and snacks to students shall provide for one-third to one-half of the daily nutritional needs of children in accordance with the "Food and Nutrition Board, National Academy of Sciences National Research Council Recommended Dietary Allowances" in one regular meal and one or more snacks.
 2. Schools shall provide to parents when appropriate a written list of nutritional items which should be included in a snack or lunch when parents are required to provide meals and snacks. The school shall have a method for providing a nutritious meal and snack in accordance with this section to a student who should arrive without one or whose parent has provided an inappropriate meal or snack.
 - (f) Written Plan and Designated Person. The school shall have a written plan which describes the methods for purchase, storage, preparation and serving of food and identifies one person responsible for the food program.
 - (g) Requirements for Food Preparation, Storage and Services.
 1. The school shall store, prepare, and serve all food so that it is clean, wholesome, free from spoilage and safe for human consumption.
 2. The school shall provide refrigeration and storage for food at not more than forty-five (45) degrees Fahrenheit for food requiring refrigeration.
 3. The school shall store all food in clean, covered containers.
 4. The school shall properly wash and sanitize all bottles, utensils, and dishes.
 5. The school shall dispose of food, milk or formula unfinished by a student.

6. The school shall prepare tasteful meals and serve them in a manner which makes them appetizing.

(9) Toileting Procedures for Day and Residential Schools.

- (a) **Written Plan.** Schools that enroll students who are incontinent shall have a written plan describing procedures for regular toileting and diapering of students and for disposal or cleaning of soiled clothing and diapers.
- (b) **Toilet Training.** The school shall toilet train students requiring such training in accordance with the plan requested by the parents or the IEP for the student and in accordance with the student's physical and emotional abilities.
- (c) **Diapering Requirements.** The school shall change the diapers of students when soiled or wet and wash and dry each student with individual washing materials during each diaper change.
 1. The school shall maintain a supply of clean, dry diapers adequate to meet the needs of the students.
 2. The school shall use either a disposable covering on the changing surface which shall be changed after each use, or a surface which can be disinfected properly.
- (d) **Clothing Requirements.** Schools that enroll students who are incontinent shall keep extra clean, dry indoor clothing to change a student's clothing which becomes soiled or wet. The school shall store clothing or diapers which are a potential health hazard in a covered waterproof container unless they can be sanitized immediately after removal from the student.

+ (10) Visiting Mail and Telephones.

- + (a) **Visiting Policy.** The school shall have a written policy pertaining to visiting and other forms of communication with family, friends, and other persons who have been approved by the parents.
 - + 1. Such policies shall be developed with the goal of encouraging healthy family relationships, maximizing the individual student's growth and development, and protecting the students, staff, and programs from unreasonable intrusions.
 - + 2. Such policies shall be available to students, staff and parents.
 - + 3. The school shall provide opportunities and encourage students to visit with parents or siblings unless such visits have been limited by court order or by the student's IEP.

- + 4. The school shall provide opportunities for visits with relatives and friends on the premises, with reasonable privacy, in accordance with the student's IEP.
- + 5. The school shall establish visiting hours which meet the needs of the students and parents.
- + 6. The school shall formulate procedures for students visiting outside the facility, including:
 - + a. A method for recording the student's location, the duration of the visit, and the name and address of the person responsible for the student while absent from the school;
 - + b. A method for recording the student's return and a procedure for action if a student fails to return.
- + (b) Mailing and Telephones. The school shall allow students to use telephone and written communications.
 - + 1. It shall be each student's right to open and send his/her own mail unread by staff, unless the student's IEP specifies reasons and circumstances where this would be inappropriate.
 - + 2. The school shall make available a telephone (pay or free) to students.
- (11) Runaways. The school shall have a written policy, including a definition of runaways appropriate for the school population and location, as well as procedures for handling situations involving students who have run away. These policies must be approved by the Division. All personnel in the school shall be familiar with the procedures for handling these situations, and the persons or agencies to be notified. The school shall notify the Division and the parents immediately whenever any student runs away.

18.06**PHYSICAL FACILITY AND EQUIPMENT REQUIREMENTS FOR DAY AND RESIDENTIAL SCHOOLS**

- (1) Safety Requirements and Inspections for Private Schools.
 - (a) Safety Inspection. The school shall have an appropriate certificate of inspection from the Department of Public Safety or the local building inspector for each building utilized by students.
 - (b) Fire Inspection. The school shall have an appropriate certificate of inspection from the local fire marshal. The school shall request quarterly fire inspections for each facility.

- (c) Meals Inspection. The school shall provide evidence of inspection from the local health department and compliance with Article X of the State Sanitary Code.
- (d) Water. The school shall have any private well or water source inspected and approved by the local board of health or health department. Outdoor and indoor swimming areas shall be tested for water quality and be secured from inappropriate entry.
- (e) Lead Paint Requirements and Lead Paint Inspection. A school enrolling students aged six years old and under shall assure that paint used in the school is lead free.
 - 1. The school shall remove or make inaccessible to students all paint or plaster containing lead four feet from the bottom of interior or exterior surfaces, and shall remove any peeling or falling paint or plaster containing lead.
 - 2. The school shall request the state or local department of health to test for and certify that the school is free of lead paint.
- (f) Building Code.
 - 1. Each facility defined as a "group residence" under Public Safety Law or by regulations of the State Building Code Commission, shall meet the building codes applicable to "group residence" under Public Safety Law or regulations of the State Building Code Commission Act.
 - 2. Each facility not defined as a "group residence" under Public Safety Law or by regulations of the Building Code Commission shall meet the building code applicable to the facility.
- (g) General Health and Safety Inspections. The school shall obtain for all buildings of the facility certification by the local Board of Health or Health Department and shall keep written reports of inspection on file. The school shall be in compliance with laws applicable to:
 - 1. Water supply;
 - 2. Sewage system and garbage disposal;
 - 3. Lighting and ventilation; and
 - 4. Food storage and preparation.

(2) Physical Facility/Kitchen area.

- (a) Required Barrier to Kitchen. The school shall provide a barrier which prevents students' access to the kitchen and refrigerators while unsupervised.
- (b) Required Maintenance. The kitchen shall be maintained in a sanitary condition and garbage receptacles used in the kitchen shall be emptied and cleaned daily.

(3) Physical Facility/Dining Area.

- (a) Dining Rooms or Areas. The school shall maintain dining rooms or areas which are sufficiently large to accommodate tables and seats for persons eating in an uncrowded manner and which are clean, welllighted and ventilated.
- (b) Dining Furniture. The school shall provide tables and chairs for use by students while dining which are of a type, size, and design appropriate to the ages and needs of the students. When feeding tables or high chairs are used, they shall be designed to prevent students from falling or slipping.
- (c) Dining Utensils. The school shall provide eating and drinking utensils which are appropriate to the age and needs of the students.
 - 1. Eating and drinking utensils shall be free from defects, cracks and chips.
 - 2. Disposable cups and plates may be used, but if plastic silverware is used, it shall be heavy duty and dishwasher proof
 - 3. All reusable eating and drinking utensils shall be thoroughly washed and sanitized before reuse.
- (d) Drinking Water and Cups. The school shall provide a source of sanitary drinking water located in or convenient to rooms occupied by students. When non-disposable cups are used for drinking water, they shall be washed and sanitized after each use.

(4) Physical Facility/Bathing and Toilet Facilities.

- (a) Equipment and Facilities. The school shall provide adequate numbers of toilet areas for students being served, and shall locate and equip toilet areas so as to facilitate maximum self-help by students. The school shall provide toilet and bathing equipment and facilities in accordance with the following provisions.
 - 1. Water Temperature. The school shall provide both hot and cold running water in sinks, tubs, and showers. For

preschool and severely disabled students the water temperature shall be no more than one hundred twenty degrees Fahrenheit and no less than one hundred ten degrees Fahrenheit. The temperature may be controlled through regulation of the boiler or a mixing valve in the faucet.

2. The school shall provide toilets, which allow for individual privacy (with partitions and doors), unless inconsistent with a toilet training program.
3. The school shall provide bathing and toileting fixtures which are specially equipped, if used by the physically handicapped.
4. The school shall provide mirrors at convenient heights for use by all students.
5. The school shall provide a place for storage of toiletries and for hanging towels and washcloths.
6. When adult toilets and sinks are used, the school shall provide non-tippable stands to permit access by those students who are able to use them.
7. In addition to toilets, portable "potty chairs" may be utilized in the bathroom or separate area for students unable to use toilets. If a separate area is used, it must be a private area.
8. If cloth diapers are used, a flush sink or toilet for rinsing diapers must be provided.
9. A hand washing facility must be provided as needed by physically handicapped students.

(b) Day Schools. In addition to the requirements outlined above, day schools shall provide and maintain one toilet and sink for every fourteen students in one or more well ventilated bathrooms or state why a lower ratio meets the needs of the school.

+ (c) Residential Schools. In addition to the requirements outlined above, residential schools shall provide:

- + 1. At least one toilet for each six (6) residents, easily accessible to students in sleeping quarters;
- + 2. At least one sink for each six (6) residents;
- + 3. At least one tub or shower for each six (6) residents.

+ (5) Physical Facility/Living Areas.

- + (a) **Arrangement of Living Areas.** Schools shall design the living areas to simulate the functional arrangements of a home and to encourage a personalized atmosphere for small groups of students, unless the school can justify that another arrangement is necessary to serve the particular needs of the students enrolled in the school.
- + (b) **Furnishings.** The school shall provide furniture and furnishings which are safe, appropriate, comfortable, and home-like.
- + (c) **Bedrooms.** The school shall provide bedrooms which:
 - 1. Have direct outside ventilation;
 - + 2. Provide at least fifty (50) square feet per student in multiple sleeping rooms, and not less than seventy (70) square feet in single rooms;
 - + 3. Have at least one window; and
 - + 4. Have a means for students to mount pictures on bedroom walls (for example, by means of pegboard or cork strips) and to have other decorations.
- + (d) **Individual Furniture.** The school shall provide each student with appropriate individual furniture, and an individual closet (or a designated section of a closet) with clothes racks and shelves.
- + (e) **Storage Areas.** The school shall provide accessible storage areas for personal possessions, such as toys, books, prosthetic equipment, pictures, games, radios, arts and crafts materials, toiletries, jewelry, letters, other articles and equipment, and a secure area for money and valuables.
- + (f) **Common Areas.** In addition to sleeping quarters, and space designated for specific activities, the school shall provide students with a lounge, living room, or family room available for their use.

(6) Physical Facility/Classroom Space. Each room or area which is utilized for the instruction of students shall be of an adequate size to accommodate the students being taught.

- (a) The school shall ensure that the size of each classroom is adequate with respect to: the number of students, size and age of students, students' specific educational needs, physical capabilities, educational and vocational activities.

- (b) The school shall have a library or resource room in addition to the regular instructional area which contains a variety of materials appropriate to the age and abilities of the students enrolled and which covers the subjects required under section 18.04(3).

(7) Physical Facility/General Space Requirements.

- (a) Indoor Space. The school shall have a minimum of thirty-five square feet of activity space per student exclusive of hallways, lockers, toilet rooms, isolation rooms, kitchen, closets, offices or areas regularly used for other purposes which shall meet the following requirements:

1. Floors of rooms used by students shall be clean, unslippery, smooth and free from cracks, splinters and sharp or protruding objects and other safety hazards, and those in direct contact with the ground shall have flooring impenetrable by water.
2. Ceilings and walls shall be maintained in good repair, and shall be clean and free from sharp or protruding objects and other safety hazards.
3. All steam and hot water pipes and radiators shall be protected by permanent screen guards, insulations, or any other suitable device which prevents students from coming in contact with them.
4. Room temperatures in rooms occupied by students shall be maintained at not less than sixty-eight degrees Fahrenheit at zero Fahrenheit outside and at not more than the outside temperature when the outside temperature is above eighty degrees Fahrenheit (measured at two feet from the outside walls and twenty inches above floor level).
5. There shall be designated space separate from classroom areas for administrative duties and staff or parent conferences.
6. Electrical sockets which are not being utilized must be secured with safety caps.

- (b) Outdoor Space. The school shall maintain or have access to an outdoor play area of at least seventy-five square feet per student using it at any one time. The average width of such a play area shall not be less than eight feet and shall conform to the following requirements:

1. Some part of the outdoor play area shall be accessible to direct sunlight.

2. It shall be free from hazards (e.g. hidden corners, unprotected poles, wells, cesspools, and steps); poisonous plants, (e.g. poison oak or ivy); and dangerous machinery or tools.
3. It shall be fenced with a non-climbable barrier at least five feet high if any part is adjacent to a highway, a roof, a porch or other dangerous area.
4. It shall not be covered with a dangerously harsh or abrasive material.

(8) Physical Facility/Architectural Barriers.

- (a) Requirements for Students with Limited Mobility. The school shall assure that students with limited mobility have access, free from barriers to their mobility, to those areas of the school buildings and grounds to which such access is necessary for the implementation of the IEPs for such students. All schools receiving federal funds shall meet the requirements of section 504 of the Rehabilitation Act of 1973.
- (b) Building Entrances. A school which enrolls students requiring wheel chairs shall have at least one entrance without steps and wide enough for a wheel chair, for each building utilized in carrying out the IEPs for such students.

Appendix 13

Complaint Management System

GUIDELINES FOR THE COMPLAINT MANAGEMENT SYSTEM

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PREFACE

This is a handbook to be used as a training guide and a resource manual for staff in the day-to-day response to incoming complaints. There will be instances in which a staff person feels that particular case warrants action which may differ from procedures set forth in this manual. In those circumstances the person should act in a manner that is consistent with the intent of this manual, the Guidelines for Complaint Resolution and his/her common sense judgement.

A staff Person of the Department of Education can best respond to a complaint if he/she understands four basic premises:

1. A working knowledge of the law is essential to adequate complaint response.
2. A complaint involves several constituencies to which the Department traditionally has not been called upon to respond on an ongoing basis; the child, the parent, and frequently a parent/child advocate or advocacy group and/or a legal representative or any of the persons involved.
3. It is vital to be responsive to the multiple and diverse constituencies who may be involved or have direct interest in a complaint.

A common sense approach, consistent with the requirements of the law, is frequently the most available resource staff can have to effect an equitable resolution of the complaint that will directly benefit the child or children involved.

This handbook provides detailed information and suggestions to assist staff in the role they are called upon to play.

INTRODUCTION

The purpose of the Massachusetts Department of Education Complaint Management System is to organize and coordinate the Department's response to complaints from the public regarding alleged violations of existing laws which come under its purview, and to assure that any violations of the law are corrected. This purpose has been successfully achieved when Department staff have sought voluntary school system compliance with existing mandates, and not taken a position of advocating for individuals or groups of individuals. This has often required that Department staff identify and work toward a solution which allows school officials to resolve disputes on the local level while simultaneously assuring school district compliance with state and federal mandates and requirements.

In order to accomplish this, Department staff responsible for handling complaints should first determine the efforts made to resolve the issues of concern at the local level. When this process has failed to achieve the desired results, Department staff should attempt resolution. Resolution begins with a thorough assessment of the events which have occurred, usually obtained by verifying the allegations made by the parent/student with the school administrator involved.

In some instances, a meeting of all those involved in the issue is necessary to realize resolution. Often, through a process of providing and sharing information, the parties are able to resolve the issue without further assistance. On some occasions, Department staff may serve as mediators of these discussions in order to obtain mutually agreeable resolutions. In some other instances school officials will disagree with Department interpretations of existing mandates and their refusal to resolve an issue will prompt direct intervention by the Department of Education.

In the past, Department staff have handled many such complaints with mixed levels of success. Department staff who are new to the Complaint Management Process should rely on other experienced staff members for suggestions of successful strategies employed in the past. This support is necessary and invaluable.

This document is intended to explain the formal Department Complaint Management System procedures. While it does not suggest strategies for resolution of complaints, it provides uniform processes for addressing complaints, clarifies responsibilities of Department staff, and outlines methods of obtaining support in the resolution of difficult complaints.

1. PURPOSES OF THE COMPLAINT MANAGEMENT SYSTEM

- 1.1 to ensure that complaints from the public are handled and resolved in a consistent, timely, and appropriate manner, with uniform Department documentation;
- 1.2 to enforce the law in an equitable manner:
- 1.3 to provide to the Department an information base on problem issues and problem localities.

2. DEFINITIONS

- 2.1 "Complaint" -- a written or oral grievance which indicates possible violation by a school or school system of education-related state or federal law, Board of Education regulations, or the legal and constitutional rights of students.
- 2.2 "Complaint Resolution" -- the point at which information indicates that the actions of the school/school system are currently consistent with the requirements of the law in those areas which are the subject of the complaint. Resolution is determined on a case by case basis.
- 2.3 "Complainant" -- the person communicating the complaint. Complaints may be submitted by any student, parent, or other interested individual or group.
- 2.4 "Respondent" -- the person or representative of the school or school system against whom a complaint is lodged.
- 2.5 "Intake Person" -- staff member who has received and logged in the complaint. It may or may not be the complaint coordinator in all instances.
- 2.6 "Complaint Coordinator" -- regional staff member, who has responsibility of assigning complaints to appropriate regional staff members.
- 2.7 "Complaint Specialists" -- regional specialists with responsibility for resolving complaints.
- 2.8 "Complaint Manager" -- regional staff member, either assistant director or team leader, who oversees the completion of all assigned complaints.
- 2.9 "Documentation Letter" -- at the time of closing the complaint, a letter will be written and sent to the LEA with a copy to the complainant, stating the non-compliance issue if in fact non-compliance was found. The letter shall detail the steps taken toward resolution and describe the resolution. It shall note that dissatisfied parties may grieve to the Regional Center Director.

A. COMPLAINTS

Knowing the source of a complaint helps to determine what other avenues of

recourse have been used.

There are numerous possible sources of complaints. The most common are parents, guardians, local school personnel, professional service providers outside the local schools, attorneys, branches of the state government including the Department of Education, advocates, advocate groups and sometimes the child him/herself.

The source of a complaint is not always the affected party; the source may merely serve as a channel to the regional office. Knowing the source of a complaint helps to determine whether other avenues of recourse have been exhausted. While the Department has the sole responsibility to enforce the law, there are instances when outside resources can be of assistance in forming agreements on how compliance with the law will be reached.

B. RESPONDENTS TO COMPLAINTS

The Regional Center Director or Bureau Director will refer complaints directed against any state agency to the appropriate person.

Eight to eighty-five percent of all complaints are submitted by parents and directed against schools. There are only a small number of other complaints which are made against the Department or other state agencies. An adequate response to complaints not directed against schools or school systems will require actions not ordinarily utilized in resolving complaints between parents/children and school. Complaints directed against any part of the Department of Education or any other state agency should be referred to the Regional Center Director or Bureau Director who will then refer the problem to the appropriate person.

C. TYPES OF COMPLAINTS

Regional offices receive various types of complaints. Typical complaints include a range from alleged failures of local school systems to provide parents with information, to do team evaluations, to provide adequate due process or other discipline related functions, to implement education plans, to observe required timelines, to provide fair entrance procedures to vocational-technical schools, to provide equal opportunity to extra-curricular sports and activities for female students.

Regional activity on an area that is not a complaint maybe to render technical assistance, provide information and clarification or to facilitate cooperation

Some of these complaints involve violations of the law; others do not. Those grievances which do not claim a violation of the law are not handled through the complaint management system. Rather, they are handled at the discretion of the regional office, in accordance with the Department and the Division's policy. Regional office involvement in cases where there is no non-compliance issue occurs usually as a result of the Division's responsibility to provide technical assistance to a school system; to prevent a problem from becoming a violation of the law; to insure understanding of the law; to clarify misconceptions; or to facilitate cooperation between school and parent.

Complaints which do involve violations of the law can either be presented by the complainant as a blatant violation or as a "masked complaint," that is, no apparent violation is immediately visible.

There are two kinds of "masked complaints": statements of concern or a question.

Careful questioning is essential to determine if violations of the law might exist.

A "masked complaint" may appear where the caller stating a problem or asking a question does not know or believe that the law is being violated. Sensitive and careful questioning by the staff person who receives and works on the "masked" complaint is essential to determine whether or not a violation of the law exists. Questions should reflect the content and intent of the law. Basic questions for Chapter 766 are:

1. Has the child received a Team evaluation?
2. If not, was a Team evaluation requested? by whom? when?
3. Was the parent informed of his/her rights under Chapter 766?
4. What kind of Team evaluations were given?
5. Did the evaluation Team meet and write an educational plan?
6. What is the prototype designated on the educational plan?
7. Did the parent approve and sign the educational plan? reject the plan? request an independent evaluation?
8. Does the parent have a copy of the educational plan?
9. Were the services prescribed in the educational plan provided? when?
10. Are quarterly progress reports on the progress of the child given to the parent?
11. Is the plan reviewed annually and updated to reflect new needs of the child?
12. Does the parent participate in the team evaluation process?

These basic questions are not all of the law, but they do provide indicators to the staff person who, in most cases, will only need to ask a few of the questions before detecting the presence or absence of a violation of the law. By no means should the staff person restrict him/herself to these questions if the problem area appears to be elsewhere.

Careful listening aids the staff in choosing appropriate question.

Equally important to skillful questioning on the part of the staff person is the art of listening. A careful listener can often detect significant areas in which the questions can be selectively chosen to confirm or deny possible violations of the law.

Informal calls need not be noted

When a problem is not a complaint but an effort from the caller to obtain information, the nature of the information requested need not be noted. If you compile new information as a result of handling the request, however, that can be duly noted.

3. OVERVIEW AND TIMELINES

- 3.1 Central office shall refer any complaint received to the appropriate regional office immediately upon receipt. The regional office shall act upon these complaints in a manner consistent with outlined in these guidelines.
- 3.2 The complaint coordinator in each center shall log all complaints at the time they are received, assigning each a number.
- 3.3 The complaint coordinator will assign each complaint to a complaint specialist, who will communicate with both the complainant and the respondent within three (3) work days of receipt of the complaint by the regional office coordinator.

- 3.4 The complaint specialist shall complete initial information gathering within ten (10) work days of receipt of the complaint in the regional office, sooner if possible. The specialist will determine whether non-compliance exists.
- 3.5 A decision to do one of the following must be made at the conclusion of gathering information by the regional office. The decision must be made no later than ten (10) work days after receipt of the complaint in the regional office.
- A. refer the case (section 6);
 - B. extend the case (section 7);
 - C. send formal communication requiring compliance (section 9);
 - D. recommend fact finding (section 9);
 - E. recommend legal office action (section 10);
 - F. close the case (section 11).
- 3.6 Except for extended cases, all efforts to resolve a complaint must be completed within twenty (20) work days of receipt.
- A. If the case is not closed at the end of twenty work days, the case will be referred to the regional center director for consultation and/or action. Consultation with the regional center director may be helpful before this time.
 - B. Extended cases may be held for up to twenty (20) working days after the decision to extend. Extended cases must be closed or referred to the regional center director within twenty (20) work days of receipt of the complaint, except that the period during which the case is extended shall not be counted (see section 7.4).

4. WHAT DOES NONCOMPLIANCE MEAN?

Noncompliance is a violation of the law. Most serious are violations which are harmful to children not transitory, and do not indicate good faith effort to comply with the law

Noncompliance indicates a violation of the law. The following are examples of serious noncompliance with the law.

- A. The violation of the law is harmful or potentially harmful to children rather than being technical and of little or no consequence to children's welfare.

Example: Delays in release of student records are thirty days or longer compared to limit of two consecutive weekdays noted in regulations.

- B. The violation of the law affects a group and is not transitory; it does not have the potential of being corrected within a short time.

Example: The school system exceeds thirty days in completing core evaluations because the school psychologist position is not be filled.

- C. The alleged violator is not making good faith efforts to comply with the law.

Example: The school system is not implementing coeducational physical education because the school committee has voted that single-sex classes are acceptable.

5. RECEIPT AND ASSIGNMENT OF COMPLAINTS

5.1 REFERRAL TO REGION

- A. All complaints received by the central office are immediately referred to the regional office which has jurisdiction over the school or school system identified in the complaint. This procedure also should be followed by a regional complaint coordinator who receives a complaint against a school outside that region's jurisdiction.
- B. If the complainant first contacts the central office by phone or in person, a central office staff person shall take down the basic information necessary to complete the top portion of a complaint form (name of complainant, telephone numbers, date received, and school or school system). The central office staff person shall call the regional complaint coordinator and relay the basic information. The central office staff person shall follow the procedures in sections 4.2.D. and 4.2.E. below in speaking to the complainant.
- C. Complainants may file a complaint with a regional office verbally. However, there may be limited occasions when the regional office will only receive written complaints from a complainant. In those unusual circumstances, it will be the regional center director's decision to require that a complaint be filed in writing.

5.2 RECORDING INITIAL INFORMATION IN THE REGIONAL CENTER

- A. The complaint coordinator shall keep both the complaint log and pre-numbered complaint forms.
- B. Upon receipt of a complaint, the complaint coordinator at the regional office shall enter basic information (name of complainant, telephone numbers, date received, school or school system, and unit handling complaint) on the top portion of the approved, pre-numbered complaint form.
- C. The complaint coordinator shall also enter the complaint on the monthly log form, together with the complaint number. Information entered into the complaint log must be accurate and complete since the logs may become legal documents. The log must be maintained so that it remains current. Each complaint must be logged in sequential order.
- D. The complaint coordinator (or the central office staff person, if the complainant has called the central office) shall inform the complainant that the complaint specialist handling the case will contact the complainant within three (3) work days and shall ask the complainant whether there are any pressing reasons as to why three days may be too long, including: (A) a student has been denied services; (B) there are important meetings or decisions which will occur within three work days. If the complainant indicates that

either of these is true, or that there is another reason why the complaint requires more immediate attention, the complaint coordinator shall notify the regional complaint coordinator about the need for urgent response.

- E. The complaint coordinator (or the person at the central office who received the complaint) shall obtain from the complainant only that information which is needed to fill out the log and the top portion of the complaint form. Enough information must be obtained to determine that it is a complaint e.g. that it raises the possibility of violation of law, but additional information about the nature of the complaint is not needed. These limitations should be followed in order to minimize the amount of information which the complainant has to repeat in telling his/her story.
- F. In determining whether the information presented indicates a complaint, the specific manner in which the call is presented is not crucial. A call for information may turn out to be a complaint after brief questioning. On the other hand, a person calling to "complain" will not be treated as a complainant if the school action involved is clearly in compliance with the law. The critical question is whether or not the call brings to the attention of the Department information which indicates the slightest possibility of a violation of law. The department, not the caller, has the responsibility to determine whether noncompliance exists.
- G. There are occasions when the complainant may wish to file a confidential complaint. In those instances, the complainant would be recorded in the master log as "confidential." The complaint specialist must respect the confidentiality of the complainant at all times. The complainant's name, or other personally identifiable information should not be recorded on the complaint form or the regional complaint log.

5.3 COMPLAINT ASSIGNMENT

- A. Each complaint shall be assigned to a complaint specialist in a regional center for action necessary to bring about complaint resolution in compliance with the law. The complaint specialist becomes responsible for all aspects of complaint resolution until the complaint is either closed or referred for other action.
- B. In those instances in which the most appropriate complaint specialist will not be in the office within a three day period (or shorter period if expedited procedures apply), the complaint coordinator shall, after recording the initial information required under section 4.2 assign the complaint to a previously designated back-up person or to the complaint manager, who will assign the complaint to a regional staff member, who shall handle the complaint until the most appropriate complaint specialist is available. This designation of a back-up person for each complaint specialist is necessary to assure that the complaint is processed as soon as possible when a complaint specialist is absent due to illness or vacation, or assignment outside the regional office.

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o the complainant

- C. When a complaint is first received, the complainant should be advised that:
- the complaint will be assigned to a regional staff person;
 - the staff person will be contacting the complainant within three working days.
 - the staff person's job is to make an effort to resolve the complaint quickly in a way that insures the law is being complied with;
 - some cases are complex and may take longer to resolve.

Detailed questions which might be asked at this point can be deferred by reminding the complainant that a staff person will be calling shortly.

Request for immediate information should be responded to if the information is known. The staff person who receives the complaint may be able to provide the complainant or caller with the information but most frequently the caller will have to be referred to a complaint specialist after the basic information is logged in.

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he intake person
s of vital
importance

The attitude of the intake person should be low-key, objective and positive when speaking to complainants. The intake person should be perceived as:

- a person whose job it is to take basic information regarding the complaint which someone else will handle;
- impartial but not an advocate;
- sympathetic, sensitive and compassionate;
- a careful listener;
- a person who can assure the complainant that the Department of Education cares about children and that it is the priority of the Department of Education to serve the educational needs of children.
- reassuring that the complaint will receive attention.

The intake person should be careful not to:

- overreact to an emotionally charged problem;
- make snap judgements;
- give the caller the impression he/she is right and the other side is "wrong";
- respond in a mechanical way.

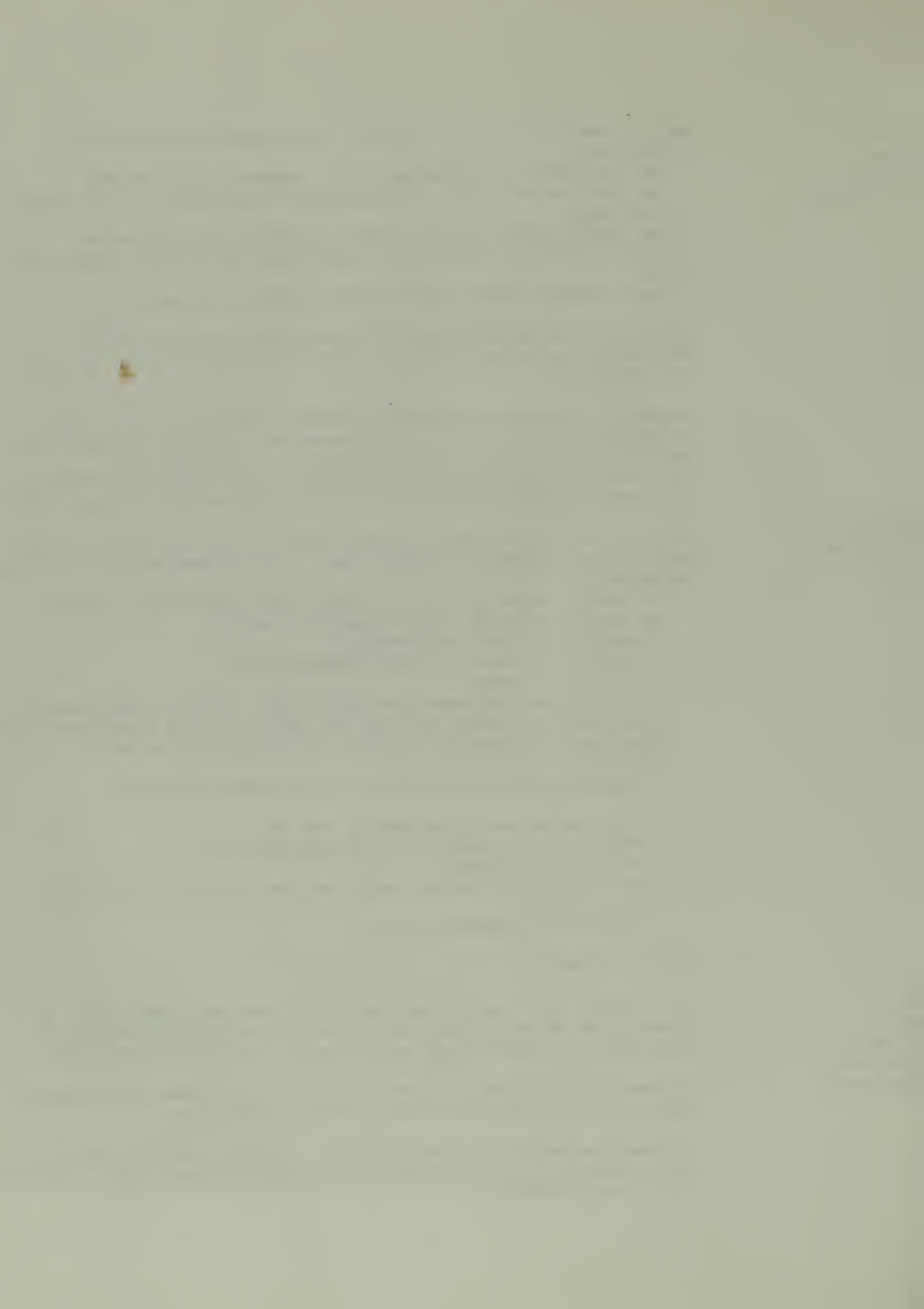
D. THE FIRST CONTACT

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The regional staff person assigned to the complaint may choose to close, refer or defer the complaint at the point of the review of the problem. These actions can be taken under special conditions.

An immediate decision to close a case should be based on knowledge that the issue involved is not a violation of the law.

An immediate decision to refer a case should be based on knowledge that responsibility for the issue rests with a bureau other than the original one assigned.



6. PRELIMINARY ACTION

- 6.1 Within three (3) work days after receipt of a complaint in the regional office, the complaint specialist shall commence fact gathering, including, but not limited to: (a) communicating with the complainant, (b) checking the master file for related complaints, and (c) communicating with the respondent. The complaint specialist shall encourage the complainant to resolve his/her concern before a complaint is filed. No action shall occur until both parties have had an opportunity to present information.
- A. Information gathered should include, but not be limited to, age, birthdate, grade, and sex of student; and description of events leading to the complaint, including relevant dates and persons involved.
 - B. Additional information gathered relevant to the specific circumstances of the complaint should include identification of existing documents which support facts pertinent to the issue, and documentation of personal and/or telephone contacts with each of the parties.
 - C. The complaint specialist may obtain further information through a visit to the school or school system involved in the complaint. A site visit may be for the purpose of reviewing pertinent records, observing pertinent activities, or meeting with persons involved in the complaint. Findings from such visits shall be documented in writing.
- 6.2 The complaint specialist, within ten (10) work days after receipt of the complaint in the regional office (or sooner where expedited procedures are required), shall determine the appropriate action to be taken and shall notify the complainant of this decision. The specialist may, in accordance with sections 6 to 11:
- (1) close the case.
 - (2) send formal communication requiring compliance within a specified period;
 - (3) extend the case;
 - (4) recommend fact finding;
 - (5) recommend legal office action;
 - (6) refer the case to another Department employee, or to another agency;

7. REFERRING A CASE

- 7.1 In most instances, complaints should not be referred outside the Department. However, there are a few notable exceptions, for example, reporting child abuse.
- A. In most instances, full responsibility for complaint resolution in compliance with the law rests with the Department.

- B. Parties to a complaint may be referred for supportive assistance to other authorities (e.g. service or advocacy organizations). Such a referral does not relieve the Department of responsibility for resolution of the complaint in compliance with the law.
 - C. According to Department policy, all Department employees must report instances of child abuse directly to Children's Protective Services, as well as inform the person reporting the instance of his/her obligation to make a report directly to Children's Protective Services.
- 7.2 Under certain circumstances, the complaint may be referred elsewhere within the Department.
- A. A complaint may be discussed with another employee within the regional office or Department who may have additional expertise in a particular area relevant to the complaint.
 - B. A complaint shall be referred to another regional complaint specialist when the possible violations involve laws for which another regional complaint specialist has responsibility.
- (1) If the original complaint specialist is concurrently responsible for some of the laws involved, she/he shall continue to work on that portion of the complaint which has not been referred, in collaboration with the other specialist(s), in accordance with these guidelines.
- (2) If another regional complaint specialist is completely responsible for all the laws involved, the original specialist shall notify the complaint coordinator and complaint manager of this action. The complaint coordinator will adjust the complaint log as necessary.

8. EXTENDING A CASE

8.1 Action on a complaint may be extended if:

- A. The parties have a scheduled meeting within a reasonable period and there will be no significant impact on the legal rights of the person(s) affected by the possible violation.
 - B. An advocate or special service is being obtained by the parent or student.
- (1) Each regional office should make information available on public and private advocacy, or service organizations.
- (2) Once the advocate has been obtained, the complaint process is resumed, unless the extension continues under paragraphs A or C, of this section.

C. An attorney representing the parent(s) or student(s) requests time to make initial efforts on the client's behalf apart from the regional office.

8.2 The complainant will be notified of any decision to extend action and the reason(s) prompting this decision. This information shall also be noted on the complaint form.

8.3 The complaint should not be extended more than twenty (20) working days. All extensions require the approval of the complaint manager and regional center director.

8.4 Once the extension period ends, the complaint process resumes, and the twenty day period for attempting resolution continues from the point at which it stopped, (For example, if a decision is made to extend, and the extension continues for fifteen working days, the case must be closed or referred to the regional center director within thirty-five working days of receipt of the complaint, instead of the normal twenty working days).

9. FORMAL COMMUNICATION REQUIRING COMPLIANCE

9.1 Upon the recommendation of the complaint specialist and after review of the appropriate central office director(s), the regional center director will send formal written communication to the non-complying party, requiring compliance within a stated specified timeline and stating that failure to comply will result in further action.

9.2 Formal communication under this section shall be used when the regional center director has determined that non-compliance does in fact exist and that formal communication is preferable to other actions. When appropriate, written responses should be reviewed by the legal office, since such written documents may be used in future litigation.

9.3 An informational copy of the written notification will be sent to the appropriate central office director(s).

10. RECOMMENDING FACT FINDING

10.1 DEFINITION

A. "Fact finding" is an investigation by two or more persons in response to a trend of similar complaints, a suspected serious violation of the law or a single complaint of such serious nature that it could affect a substantial number of students in the school or school system.

B. The "fact finding" concentrates on specific and narrowly defined issues of compliance, makes use of a day-long site visit by the staff, and results in the issuance of a final report of findings.

10.2 CRITERIA

A. Fact-finding may occur if the following condition exist:

(1a) The regional center has received a series of complaints which are similar in nature and involve the same school or school systems; or-

(1b) the regional center has received an individual complaint which alleges a serious violation of the law likely to affect educational services to other students at that school or school system even through other formal filed complaints have not been received; and-

(2) the complaint specialist has followed the procedures specified in the complaint management system guidelines, which could lead to resolution of the problem; and-

(3) there is good cause to believe that the school is in violation of the law; and-

(4) the issues to be investigated have been specifically and narrowly defined.

B. Under the critieria above, fact-finding should be used only when other means have been insufficient to obtain the information needed to decide if there is a violation of the law. Fact finding may be required, however, if such an activity is needed in order to establish necessary information concerning a larger pattern of policies or practices which the complaint(s) has (have) raised. I is essential that the criteria above be met.

10.3 RECOMMENDATION AND DECISION FOR FACT-FINDING

A. The recommendation to conduct a fact-finding visit is made to the regional center director by the complaint specialist.

B. The decision to conduct a fact-finding visit shall be made by the regional center director.

11. RECOMMENDING LEGAL OFFICE ACTION

11.1 The complaint specialist may recommend that the regional center director ask the legal office to review or respond to a complaint when appropriate.

11.2 The regional center director may refer complaints to the legal office when all attempts by the regional complaint specialist to achieve compliance have been tried or found ineffective in achieving resolution in a timely manner.

- 11.3 The legal office will review a complaint or respond to the request of the regional center director as soon as possible. A copy of the legal office response to the respondent in violation of the law will be sent to the appropriate regional center director and central office director(s). The complaint specialist will not close the complaint until the respondent has taken the action ordered by the legal office.

12. CLOSING THE COMPLAINT

12.1 "COMPLAINT RESOLVED"

A. "Compliance found"

A complaint may be closed for this reason if it is determined that compliance has been reached on the issues raised by the complainant. There must be tangible evidence that the requirements of the law are being met.

B. "Previous Non-Compliance Has Been Remedied"

- (1) A complaint may be closed for this reason when (a) the complaint specialist determines that there was non-compliance at the time of the complaint and (b) parties involved have taken steps which have produced compliance with the law.
- (2) A complaint may not be closed for this reason when the parties have agreed to take steps necessary to achieve compliance but have not yet done so. Instead, the complaint specialist may, if appropriate, extend the case pending the implementation of appropriate steps, under section 7.1.D. The plan for compliance will contain specific timelines. The complainant will be informed of these in writing.

12.2 "CASE CLOSED WITHOUT RESOLUTION"

A. "Case Transferred Out of This Complaint System"

- (1) A complaint may be closed for this reason where another regional office or Department is wholly responsible for ensuring compliance on all possible violations indicated by the complaint. This may include special education complaints which are referred to appeals.
- (2) Special education complaints should be resolved using the complaint procedures. Consultation with the regional mediator may result in a joint decision to refer the complainant to the Appeals process.
- (3) A complaint may not be closed for this reason if the complaint specialist has responsibility for one or more areas of the complaint, even though other aspects of the complaint are referred to other complaint specialists.

(4) The complaint will remain open, using the same complaint form, if it is transferred to another person in the regional center.

B. "Impossible to Proceed Without Complainant Cooperation"

(1) Anonymity

(a) A complaint may be closed when it is necessary to reveal the name of the student, parent, or complainant to a third party and permission to disclose the name has been denied.

(b) before closing for this reason, the complaint specialist shall:

(i) consider if involvement of an advocacy organization would assist in complaint resolution (Referral to an advocacy group or service organization can sometimes result in the person becoming comfortable enough to grant permission, or allow the advocacy group or service organization to refocus the complaint in a way which does not require use of the person's name because similar complaints have been received);

(ii) consider if a site visit would assist in complaint resolution;

(iii) determine that further action without revealing the name is in fact impossible (Complaints which relate to an alleged pattern, practice or policy affecting more than one student can often be resolved without revealing the name).

(2) Complainant's Insistence That Case Be Closed

(a) A complaint may be closed if the complainant insists that the complaint be closed and further action is not possible without some risk to the complainant.

(b) This option shall not be used for closing a complaint simply because the complainant is "satisfied" with the school's or school system's actions despite continuing noncompliance.

(3) Complainant's Refusal to Provide Vital Information

(a) A complaint may be closed if further action is impossible without certain information which the complainant refuses to provide and which cannot be obtained through other means (e.g., the name of the school system).

(b) Attempts to resolve the complaint should continue if the information can be obtained through other means (e.g., a site visit). In certain cases, however, the complaint may still have to be closed because the conditions listed under (1) anonymity, or (2) complainant's insistence, have occurred.

C. "Law is Too Unclear to Determine Compliance"

(1) A complaint may be closed for this reason if:

(a) the legal office has indicated that existing law is unclear in this area and the Department is unable to assume enforcement responsibilities; or

(b) the regional center director, acting on the request of the complaint specialist, has obtained a written or oral statement from the legal office that the law is too unclear to assume enforcement responsibility. A copy of this determination by the legal office should be sent to the appropriate central office director(s).

(2) In such cases, the complaint specialist may provide the complainant or respondent with technical assistance and/or a referral to obtain assistance from other Department staff.

D. "Other Reason"

No complaint may be closed for any reason other than those listed above without the approval of the regional center director, in consultation with the appropriate central office director.

Written summary of complaint

12.3 The complaint specialist will write a documentation letter (see 2.9) when closing a complaint.

13. CONTINUED ACTION BY THE COMPLAINT SPECIALIST

13.1 If the initial decision (among the actions set forth in section 6 and 11 above and made within ten work days of receipt of the complaint) does not lead to closure of the complaint, the complaint specialist may take additional appropriate steps from among sections 6 through 10 in accordance with the criteria set forth in those sections, provided that all cases must be closed or referred to regional center director within (20) working days of receipt (excluding days during which the case is extended).

13.2 Except for fact-finding listed under section 9, all information gathering necessary for resolving the case, including site visits, should be completed prior to the decision required within ten workdays of receipt of the complaint. Site visits may be made after the ten day period, however, where an unforeseen need for additional information arises.

14. PROCESSING OF FORMS

- 14.1 Whenever a complaint is closed or referred out of the complaint system, the complaint specialist shall:
- A. complete all information on the complaint form;
 - B. return the completed form to the complaint coordinator.
- 14.2 The complaint coordinator shall enter the date of closure or referral on the regional log sheet.
- 14.3 At the end of each month, the complaint coordinator shall send to the office of regional services a copy of the computer printout of the monthly log sheet for that month (see appendix four for procedure for entering information into the computer). This log will include all complaints which are open or opened during the month.
- 14.4 At the end of each month, the complaint coordinator will send a copy of the monthly log sheet to the complaint manager. The complaint manager shall:
- A. Take the monthly log she/he has received and check that all complaints open or opened that month have met the timelines established in section 2.
 - B. Review cases referred elsewhere (e.g. to SPED Appeals) and unsure referral is necessary.
 - C. Ensure that recent cases have been closed legitimately.
 - D. Take the monthly log form for the previous month and make sure all complaints which remained open at the end of that month have been closed, referred out of the complaint system or extended.
 - E. Contact all complaint specialists who have complaints which have not met the timelines established in section 2, and determine status of open cases.
- 14.5 Each central office unit may request a copy of a complaint entered on the log directly from the complaint coordinator in each region.
- 14.6 When a complaint is closed, the final complaint form will be filed as follows:
- A. One copy (white) maintained in the complaint specialist's files.
 - B. Two copies (yellow, pink) filed in order by complaint number in the region's master file.

15. DISSATISFIED PERSONS

- 15.1 Any person or group of persons, institution, public or private agency who has an interest in the complaint, and who is dissatisfied with the regional office action or inaction, may submit their grievance to the regional center director.
- 15.2 In any such case, the regional center director may take any action necessary to the fair resolution of the complaint.

APPENDIX 19

Special Education Appeals Guidelines

Summer 1983

SPECIAL EDUCATION APPEALS GUIDELINES

MASSACHUSETTS DEPARTMENT OF EDUCATION — SUMMER 1983

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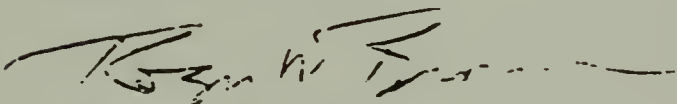
The Massachusetts Department of Education insures equal employment/
educational opportunities/affirmative action regardless of race,
color, creed, national origin or sex, in compliance with Title IX
or handicap, in compliance with Section 504.

Publication: #13342

Approved by Daniel Carter, State Purchasing Agent

INTRODUCTION FOR GUIDELINES

These revised guidelines are intended to clarify for the parties using the appeals process, and the general public, the legal and procedural issues that are the concern and responsibility of the Bureau of Special Education Appeals. We advise parents, their attorneys and advocates, and local public school districts, and their representatives to familiarize themselves fully with these guidelines in order that the appeals process proceed in an informed, orderly, and efficient manner. If you need additional clarification on any aspect of the appeals process, please call Carol Kervick, Director of the Bureau of Special Education Appeals, at 770-7498.



Roger W. Brown
Associate Commissioner
for Special Education

1. THE HEARING

BUREAU OF SPECIAL EDUCATION APPEALS

HEARING OFFICER GUIDELINES

I. INTRODUCTION

This manual published in the Summer of 1983 is intended to describe the procedures currently in use by the Bureau of Special Education Appeals and to furnish guidelines to hearing officers and participants before the Bureau. It will be reviewed periodically to allow for modifications of existing provisions and any additions or deletions deemed necessary.

II. STATUTORY AUTHORITY FOR BUREAU OF SPECIAL EDUCATION APPEALS

In 1972, the passage of Chapter 766 by the Massachusetts legislature, effective as of September 1, 1974, created a statutory right to an adequate publicly supported education for all resident children with special needs. The Bureau of Special Education Appeals was created to implement due process rights of parents, children and public schools when disputes arise concerning a child's educational program. The Bureau has jurisdiction over disputes between children, parents and local educational agencies involving any matter concerning the provision of a free appropriate public education to a child with special needs.

The Bureau has the authority to resolve disputes in accordance with M.G.L. c. 15; c. 71B and the regulations promulgated thereunder (603 CMR 28.00), 20 U.S.C. 1401 et seq. (P.L. 94-142) and the regulations promulgated thereunder, and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the regulations attendant thereto.

The Bureau's hearing procedure is regulated by the Massachusetts Administrative Procedure Act, M.G.L. c. 30A. This statute requires the Bureau to conduct fair and impartial hearings and to render written decisions based upon findings of fact and supported by substantial evidence.

The Regulations promulgated pursuant to this statute, codified as 801 C.M.R. 1.00 et seq., provide both a set of formal and informal rules to govern the conduct of the proceeding. Generally the informal rules will be utilized unless in the judgment of the hearing officer application of some or all of the formal rules would be more appropriate to the given hearing.

These guidelines should be read as consistent with the requirements of the above-cited statutes, regulations and relevant case law. Where the following guidelines are viewed to be inconsistent with the above provisions of law, those provisions of law shall prevail.

All hearing officers of the Bureau shall follow these guidelines in the performance of their responsibilities consistent with the discretion necessary to adjudicate disputes.

The guidelines are not intended to either expand upon or restrict rights afforded the parties by statute, and should not be construed as conferring additional rights.

III. INITIAL STEPS OF APPEAL PROCESS

Generally

When a rejected education plan is received, a master file is opened, a case number is assigned, and the Bureau's representative (located in the appropriate Regional Educational Center of the Department of Education) is notified. The Bureau encourages but does not require the parties to avail themselves of the voluntary mediation/technical assistance services of the Regional Representatives (Mediators). As mediation is a voluntary process, the Bureau of Special Education Appeals considers all discussions occurring during the mediation session as offers in compromise, pursuant to Massachusetts case law. Thus, unless all parties stipulate otherwise, mediation discussions will be treated as privileged. Nevertheless, specific proposals to modify the child's IEP may be entered into evidence solely for the purpose of showing that the other party had notice of the proposal at the time of mediation.

The mediation file will be kept separate from the hearing file.

In the event that informal efforts do not resolve the matter in dispute either party may request a hearing before the Bureau.

Upon receipt of the written request for a hearing the Bureau shall schedule a hearing date within the time guidelines of P.L. 94-142 and c. 766. The Bureau shall notify the parties of the date, time and location of the hearing.

POSTPONEMENT OF INITIAL HEARING DATE

The Bureau strongly recommends that parties request a hearing only when they are ready to proceed to hearing.

Because of Federal and State time requirements governing the scheduling of due process hearings, the Bureau will not grant a postponement unless satisfied that such postponement is clearly unavoidable. Requests for postponements must be received 7 business days in advance of the hearing, with notice to the other party.

Should a party fail to appear at a scheduled hearing, the hearing officer may take evidence and issue such orders as he/she deems necessary, including but not limited to (a) ordering an educational placement for the child; or (b) defaulting the absent party.

EXPEDITED OR EMERGENCY HEARINGS

Where there is good cause, the Bureau will make reasonable efforts to expedite the appeal process. For purpose of illustration, such good cause may be found where: the health and safety of the child or other children would be endangered by a delay; the child is not receiving any special education services; or the current services are sufficiently inadequate that harm to the child or other children is likely.

SUMMER SCHEDULE FOR HEARING AND MEDIATION

In order to comply with existing State and Federal Regulations, the Bureau will schedule a hearing no later than twenty days after receipt of the request for hearing. Accordingly, the Bureau will hold parent/school conferences and hearings throughout the entire calendar year to insure compliance with the statute. If witnesses cannot be present for hearings, the Bureau and the parties should explore other means of making their testimony available to the hearing officer. If other efforts fail, a subpoena may be issued.

LOCATION AND TIME

Hearings are usually held within the region of the Department of Education where the child resides. They are scheduled at one of the Department's regional educational centers or at another location agreed to by the parties and the hearing officer.

HEARINGS CLOSED TO THE PUBLIC

The hearings shall be closed to the public unless the parents request otherwise. In addition to the parties and their representatives, those present may include:

- Witnesses testifying at the hearing. Witnesses may be present for the entire hearing, except in the discretion of the hearing officer when such presence violates the privacy of the child or significantly impairs the ability of the hearing officer to develop a complete record.
- An interpreter if the primary language of the home is other than English.
- Persons permitted to observe at the discretion of parents.

REPRESENTATION OF PARTIES

The parents (or the child, if the child is 18 years of age or older), have the right to be represented at the hearing by a person(s) of their choosing, such as an expert in the area of the child's special needs, or by an advocate, or attorney, or by both. Although such representative need not be an attorney or an expert, the representative should be thoroughly familiar with the appeals procedures, the law, and the facts of the case.

The public school system has a right to be represented by a person, or persons, of its choice. Such persons may be attorneys, experts in special fields, or employees of the school department.

A list of low cost legal services and advocates is available in each regional office.

LANGUAGE OTHER THAN ENGLISH

If a parent is unable to communicate with facility in the English language, the school committee shall, when it files a copy of the rejected educational plan, notify the Bureau of the parent's primary language. All notices and communications thereafter sent by the Bureau to the parents shall be in that language unless the parents have designated an English-speaking person as their representative in the appeal. The School Committee and the parents should notify the Bureau when requesting a hearing if a translator is needed.

DISCOVERY

The parties are required to exchange all documents they intend to introduce at least five days prior to the hearing (601 C.M.R. 28.00, Section 402.5; C.F.R. 121a.508). Additional information may be obtained through the use of discovery procedures (e.g. interrogatories, depositions) as provided in 801 C.M.R. 1.01(8), 1.02(8), and subject to the discretion of the hearing officer

The hearing officer may, on motion of either party, issue an order to protect any person from annoyance, embarrassment, or undue burden or expense in connection with the provision of information prior to hearing (801 C.M.R. 1.01(5)(d)). Such an order may contain limitations on the scope, method, time or place of interrogation, or on the identity or use of documents to be provided.

Parents shall, pursuant to the Massachusetts Student Record Regulations (603 C.M.R. 23.00), have full access to the file maintained by the school department on the child. If the school department denies such access to the parents, the parents may request the hearing officer to issue an order to the school department to grant such access at a reasonable time prior to the scheduled hearing.

SUBPOENAS

The Bureau has the power to issue (on its own motion or at the request of a party) subpoenas to require a person to produce documents and/or to appear and testify at the hearing. (See G.L. 30A; C.M.R. 801 1.01(10)(j); 1.02(10)(j)).

A request for a subpoena shall be made in writing and shall specify the name and address of the person to be subpoenaed, the nature of the testimony sought, and a description of the documents to be produced.

A person receiving a subpoena may request the hearing officer to vacate or modify the subpoena. The hearing officer may so do if he/she finds that the testimony or documents required are not relevant to any matter in question, or that the time specified for compliance, or breadth of material sought imposes an undue burden on the person subpoenaed.

If any person fails to comply with a properly issued subpoena, the Bureau may, on its own motion or at the request of the party requesting the subpoena, seek enforcement of the subpoena through the Legal Office of the Department of Education.

INTERVENTION

The hearing officer may allow any person showing that he/she may be substantially and specifically affected by the proceeding to intervene as a party in the entire proceeding or any part of it, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose as the hearing officer may order. (See 801 C.M.R. 1.01(9)).

MOTIONS

A party may request, (move) either prior to or during the course of the hearing, that the Hearing Officer issue any order or action not inconsistent with relevant law or regulations.

A motion may be ruled based upon (1) written material; (2) oral presentation or (3) oral argument with written documentation. If a hearing on the motion is requested it may be granted at the discretion of the hearing officer and will be scheduled as expeditiously as possible. (See 801 C.M.R. 1.01(7)(a)).

The hearing officer deciding the motion may or may not be the person that hears the case on the merits.

PRE-HEARING CONFERENCES

At the request of a party or on his/her own motion, a hearing officer may convene a pre-hearing conference to narrow factual and/or legal issues, resolve evidentiary or other procedural matters, facilitate and/or limit discovery, and for any other purpose consistent with the authority and responsibility of the hearing officer.

OPENING STATEMENT AT THE HEARING

The hearing officer will make an opening statement which includes, but is not limited to, the following information:

1. Each party has the right to be represented by an attorney or person(s) or his choice.
2. Each party has the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence.
3. The rules of evidence observed by the courts will not be observed, but evidence which is repetitious or irrelevant may be excluded at the discretion of the hearing officer.

4. Only evidence introduced at the hearing and made a part of the record shall be considered by the hearing officer in making a decision.
5. The hearing is closed to the public and all testimony shall remain confidential, unless otherwise requested by the parent.
6. The hearing will be tape-recorded by the hearing officer and that recording will be the official record of the hearing.
7. The hearing officer will render a decision within twenty-five days of the conclusion of the hearing.
8. The party requesting the hearing will usually proceed first in presentation of its case.
9. The hearing is conducted pursuant to G.L. c. 30A, c. 71B, P.L. 94-142 and the Regulations promulgated pursuant to these statutes.
10. Each witness will testify under oath or affirmation.
11. The tape recording made by the hearing officer and the exhibits admitted will serve as the official record of the hearing. No other recording devices shall be permitted at the hearing except pursuant to an agreement between the parties and with the prior approval of the hearing officer.
12. When it is impossible to hear all testimony on the originally scheduled date, the hearing officer shall continue a hearing to the next available date.

ORDER OF PRESENTATION

The moving party will generally begin the presentation of its case by making an opening statement, after which his/her witnesses will be called. A witness will first be heard on direct testimony. Subsequent thereto the opposing party is entitled to cross-examine such witness. Upon completion of the case of the moving party the opposing party shall make an opening statement followed by presentation of its witnesses in like manner.

Both parties shall have the opportunity to rebut or explain the testimony and evidence of the opposing party and witnesses.

It is within the discretion of the hearing officer to vary the order of presentation in order to expedite the hearing, focus on specific issues of facts, or for any reasonable purpose.

DECORUM AT HEARINGS

During the course of a hearing the hearing officer has the authority and obligation to insure that appropriate standards of conduct are observed and that the hearing is conducted in a fair and orderly manner. In order to insure that the purpose of the state and federal education statutes is furthered, the hearing officer may censure, reprimand or otherwise act to insure that lawyers and advocates conduct themselves in an appropriate manner. In so doing the hearing officer will be guided by Rule 3:22, Canon of Ethics and Disciplinary Rules Regulating the Practice of Law, where applicable.

EVIDENTIARY CONSIDERATIONS-M.G.L. c. 30A § 11 (1-5)

In the admission of evidence the hearing officer shall be guided by the provisions of c. 30A that follow:

Section 11. In addition to other requirements imposed by law and subject to the provisions of Section 10, agencies shall conduct adjudicatory proceedings in compliance with the following requirements;

(2) Unless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

(3) Every party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence.

(4) All evidence, including any records, investigation reports, and documents in the possession of the agency of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered, except as provided in paragraph (5) of this section. Documentary evidence may be received in evidence in the form of copies of excerpts, or by incorporation by reference.

(5) Agencies may take notice of any fact which may be judicially noticed by the courts, and in addition, may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

ADMISSIBILITY

Although the formal rules of evidence are not strictly observed at a hearing, they shall serve as guidelines for the hearing officer. The hearing officer may exclude repetitious or irrelevant evidence. The hearing officer may directly question any witness at any time he/she deems necessary.

WEIGHT AND CREDIBILITY

While the hearing officer is free to admit all evidence bearing on the issue at hand, he/she must only assign probative value to "that kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs". (M.G.L. c. 30A § 11 (2)).

The hearing officer must carefully weigh many elements in determining the weight and credibility to be afforded evidence. Among these elements are:

1. The witness' degree of first-hand knowledge of the child.
2. The expertise of the witness.
3. The witness' ability to show the connection between the diagnostic data and prescriptive recommendations.
4. Consistency between the witness' testimony and written documents.
5. The ability of the witness to be candid, and answer specific questions with specific answers.
6. The reliability of the tests used to assess the child:
 - a. Are the tests properly standardized?
 - b. Were the test administered for the purpose for which they were designed?
7. The interest of the witness in the outcome of the case.
8. The demeanor of the witness.
9. Knowledge of the plan(s) proposed by the school and/or parents.

ELICITING EVIDENCE

In deciding upon the "least restrictive appropriate placement" for the child, the hearing officer must determine that the program is "reasonably calculated" to benefit the child assigned thereto. If the parties and their representative do not elicit sufficient evidence to enable a hearing officer to make such a decision, he/she must actively pursue the necessary information. Similarly, if the parties are not well versed in hearing techniques, the hearing officer may guide them in their presentation.

The hearing officer shall take an active role in clarifying statements and pursuing relevant matters not previously discussed or insufficiently developed. If, at the close of the hearing, there is insufficient evidence to render a decision, the hearing officer may order further evaluation of the child subject to parental consent.

ADEQUACY AND APPROPRIATENESS/FREE APPROPRIATE PUBLIC EDUCATION

To meet the standard of adequacy and appropriateness, the educational plan need not be the ultimate or best conceivable plan. It must, however, be more than minimally sufficient. To test the adequacy and appropriateness of an educational plan, the hearing officer will be guided by statutory language and the rules and regulations of c. 766 and 20 U.S.C. 1401 et seq., as well as appropriate case law. The hearing officer will, in all cases, consider the following elements:

1. Whether the child's special needs were correctly identified by the Evaluation Team, and were based on sufficient evaluative information.
2. Whether the educational plan specifically addresses the needs found by the Evaluation Team and proposes services responsive to those needs.
3. Whether the plan was developed in accordance with the procedures set out in c. 766 and 20 U.S.C. 1401 et seq.
4. Whether the plan is reasonably calculated to provide "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction". (Hendrick Hudson Board of Education v. Rowley, (102 S. Ct. 3034 at 3049 (1982))).
5. Whether the public school is capable of appropriately implementing the plan.
6. If a private school is under consideration, whether it is ch. 766 approved.
7. Whether the private program is capable of appropriately implementing the plan.

The Hearing Officer will apply the above standards to the educational plan(s) at issue in the hearing to determine that a plan constitutes the least restrictive appropriate program for the child. If the parent or public school proposes a placement outside the public sector, the hearing officer will inquire as to the adequacy and appropriateness of that placement.

The specific facts of each case will be weighed carefully in determining the least restrictive appropriate placement for each student. No one element is determinative of the issue.

CLOSING THE HEARING

When all testimony has been concluded the hearing officer in his/her discretion shall allow each party or its representative to make an oral or written closing statement. Pursuant to P.L. 94-142 and c. 766, a decision in the matter shall be issued within 25 days of the close of the hearing. The hearing is closed upon receipt of the closing argument or upon the date such document is due, whichever comes first.

STANDARD OF HEARING OFFICER CONDUCT

The hearing officer's responsibility for adjudication requires complete independence of act and judgment. Not only must a hearing officer be impartial, but he/she must also give the appearance of impartiality. To preserve such impartiality, hearing officers shall discharge their duties in a manner consistent with applicable legislation governing the activities of state employees, public officials and consultants to the Commonwealth and the following standards of professional conduct:

- No hearing officer of the Bureau shall have any interest, financial or otherwise, or engage in any business transaction or professional activity, which is in conflict (or might reasonably tend to conflict) with the proper discharge of his/her duties.
- No hearing officer shall accept other employment which will impair independence of judgment in the exercise of official duties.
- No hearing officer shall disclose confidential information acquired in the course of official duties.

A hearing officer shall not hear any case in which he/she has had any direct prior involvement in any capacity other than as a hearing officer for the Bureau.

In order to minimize exparte communication between a party and the hearing officer communication should be in writing with a copy mailed to the other party.

The hearing officer shall, on motion of any party or on his/her own motion, withdraw from a case if the hearing officer determines that his/her impartiality has been compromised. A motion to disqualify a hearing officer may be made at any stage of the proceeding.

IV. THE DECISION

ASSESSING THE EVIDENCE

The hearing officer shall consider only those matters which are part of the record. In reaching a decision, he/she must review the entire case record, carefully weighing the evidence and assessing its weight, credibility and probative value. His/her analysis must be clear and concise. The hearing officer must reach a conclusion by applying state and federal law to the facts of the case. The hearing officer can find in favor of any one of the four options below, provided such finding is based upon a preponderance of the evidence presented:

1. The placement proposed by the public school
2. The placement proposed by the parent
3. Either of the above proposed placements with modification
4. An alternative placement recommended by the hearing officer.

(c) Reject the decision of the hearing officer and appeal same.

Both parties have rights to appeal under P.L. 94-142 (20 U.S.C. 1401), and Chapter 71B and 30A of the Massachusetts General Laws. Parents may choose to appeal the decision of the Bureau to the State Advisory Commission (SAC) but this appeal is optional. The public school and the parent, (when the parent waives the right to appeal to the State Advisory Commission or following the decision of the SAC) may file a petition for review in the Superior Court of competent jurisdiction (State) or in the district court of the United States (Federal). Such appeals must be filed within thirty (30) days after receipt of the final decision of the Agency.

The Bureau will provide an electronic verbatim record of the hearing upon request by a party.

If either party requests of the Bureau a certified, written transcription of the entire sound recordings or any portion thereof, that party must arrange for the transcription of the sound recordings at his own expense. Transcripts prepared by the party must be submitted to the Bureau of Special Education Appeals for certification within 35 days of service of a copy of a petition for review upon the agency.

Any party unduly burdened by the cost of preparation of a written transcript of the sound recordings may petition the Bureau of Special Education Appeals for relief.

TENTATIVE DECISION

If the hearing officer who heard the case is not available to write the decision, the Director, pursuant to M.G.L. c. 30A ss. 11(7), will assign the case to another hearing officer. Said hearing officer shall prepare, after a review of the entire record, a tentative decision. Each party affected by the tentative decision may file objections and present written argument to the assigned hearing officer. The hearing officer will consider the objections and arguments and will render a final decision within a reasonable time.

POST HEARING MOTIONS

After a decision on the merits, a party may move to re-open and/or reconsider that decision. The grounds for such a motion are set out in each decision. Grounds include but are not limited to serious error of law, significantly changed circumstances, or the discovery of material evidence existing at the time of the hearing, if the introduction and proof thereof would alter the conclusion of the decision. Post hearing motions should be addressed to the hearing officer who decided the case on the merits. He/she will act on the motion. Application should be made within 15 days after the date of the decision. Those requests received by the Bureau within the 15 days will stay the time for appeal. Said stay shall exist only until the Bureau has acted on the motion.

THE COMPLIANCE HEARING

If a party contends that the decision is not being complied with, he/she shall set out the specific areas of alleged non-compliance in writing and shall request that the Bureau seek compliance. The hearing officer shall ascertain the facts regarding compliance, and if necessary, shall convene a compliance hearing. The scope of inquiry at the compliance hearing shall be limited to:

1. Facts bearing on the issue of compliance.
2. Facts of such a nature as to excuse performance.

If the hearing officer finds non-compliance without any substantial mitigating factors, he/she shall order compliance, and if necessary refer the matter to the Legal Office of the Department of Education for enforcement.

The Legal Office of the Department of Education will take all measures necessary to enforce the decisions of the Bureau, including referral to the Attorney General for appropriate action.

DECISION WITHOUT A HEARING

A parent or public school may request a decision without a hearing. Under this procedure the parties and the hearing officer must agree to a decision based solely on written material.

If all parties agree, the hearing officer will review all the documents and write a decision that has the same force and effect as any Bureau decision.

Although the parents and the public schools mutually agree to a decision without a hearing, either party may withdraw its consent at any time prior to the decision. Said party can request a hearing.

PUBLICATION OF DECISIONS

The Bureau of Special Education Appeals publishes its decisions periodically. They are available in the Central and Regional Offices of the Department of Education and in most law libraries.

APPENDIX I

EFFECT OF DECISION

Placement Pending Appeal -

The law is currently in flux regarding the status of the child while an appeal of a Bureau of Special Education Appeals decision is pending in court. State law dictates that the decision of the agency (Department of Education) is final and such decision then becomes the placement pending appeal for purposes of 603 C.M.R. 28.00, Section 327. This Regulation requires a child to remain in his/her current placement until "a placement for the child is agreed upon, ordered, or otherwise required..."

Federal law (20 U.S.C. 1415(e)(j)) requires that "the child shall remain within their current educational placement during the pendency of any administrative or judicial proceeding conducted pursuant to this section unless the state or local education agency and the parents or guardian otherwise agree".

Some federal courts have interpreted this section to mean that the placement pending appeal is the last placement agreed upon by LEA and parent, while others read it as the last placement agreed upon by the state agency (herein the Department of Education) and parent.

RETROACTIVE REIMBURSEMENT

Pursuant to state law a parent may, in certain circumstances, be entitled to receive reimbursement for costs incurred as the result of a private educational placement unilaterally made subsequent to the rejection of the child's IEP. (See Amherst-Pelham Regional School District v. Department of Education, 376 Mass. 480, 381 N.E. 2d 922 (1978)). Currently federal law does not specifically recognize such a right.

APPENDIX II

STATE AND FEDERAL REGULATIONS REGARDING HEARING PROCESS

+400.0 Appeal to the Bureau of Special Education Appeals: Parent/School Conference; Notice to the Bureau of Special Education Appeals.

In order to encourage informal resolution of differences of opinion about an IEP, and to assist parents and schools in preparing for hearing, there shall be a thirty day period for discussion beginning on the date the notice is received by the Bureau of Special Education Appeals (hereinafter "Bureau") that an IEP or a finding of no special need has been rejected by the parent, or that a request for a hearing has been filed by a parent in accordance with § 401.1 or by a school committee in accordance with § 401.2. During the thirty day period the regional representative of the Bureau shall schedule a parent/school conference and shall participate in said conference by providing for mediation, clarification of issues and assistance in following the guidelines of the Bureau. The conference shall not be used to delay the hearing. Both parties may agree to postpone the hearing pending further attempts at resolution.

400.1 No later than five days after receipt of a notice indicating that an IEP or a finding of no need for special education has been rejected by the parent, the school committee shall send a copy of such notice to the Bureau and to the regional representative of the Bureau. No later than five days after receipt of such notice, the Bureau shall send a notice to the parties. Such notice shall contain:

400.1 (a) A statement indicating the rights of parents and the school committee in the appeal process.

400.1 (b) A statement explaining the purpose of the parent/school conference.

401.0 Appeal to the Bureau of Special Education Appeals: Request for hearing; Rights of parents and schools; Notice to parties.

If no resolution of differences occurs at the parent/school conference, either party may request a hearing in accordance with the procedures set out below:

+401.1 A parent may request a hearing at any time after the parent/school conference with the regional representative of the Bureau, by sending a written request to the Bureau of Special Education Appeals at its central office, Division of Special Education. A parent may initiate a hearing on any matter concerning the proposed IEP or the manner of implementation of an accepted IEP. A parent, however, need not request a hearing to resolve issues of non-compliance over an accepted IEP, but may report such issues of non-compliance to the Regional Branch Office of the Division for enforcement procedures consistent with these regulations.

+401.2 A school committee may request a hearing at any time after the parent/school conference with the regional representative of the Bureau by sending a written request to the Bureau of Special Education Appeals at its central office, Division of Special Education. The Bureau shall schedule a hearing upon such school committee request provided that the remedies sought are consistent with Chapter 766 of the Acts of 1972 and these regulations. A school committee may not request a hearing on any one of the following matters: parental consent to an evaluation in accordance with § 317.4; parental request for an independent evaluation in accordance with § 328.0; or parental request for a regular education program subject to the provision of § 327.0.

401.3 No later than five days after the receipt of a request for a hearing, the Bureau shall send notice to the parties. The notice shall include the following:

401.3 (a) A statement indicating the place of the hearing, and the fact that such hearing shall be scheduled on a calendar for hearings on a chronological basis, as requests for hearings are received.

401.3 (b) A statement indicating that the Bureau will give written notice of the date of the hearing when such date is determined.

401.3 (c) A statement indicating that the hearing will be scheduled within twenty days after receipt of the request of hearing, and that a decision will be rendered within forty-five days after the receipt of the request for a hearing by the Bureau.

401.3 (d) A statement indicating that either the parent or the school committee may request a decision from the Bureau without a hearing. The Bureau may, in its discretion, grant such request if both parties agree.

401.3 (e) A statement indicating that hearings shall be scheduled in the Regional Branch Office of the Department of Education in the region where the child resides or at a location mutually agreeable to the parties.

402.0 Appeal to the Bureau of Special Education Appeals: Hearings; rights and responsibilities of parties; notice to parties.

The Bureau shall hold a hearing no later than twenty days after receipt of the request for a hearing. Hearings before the Bureau of Special Education Appeals shall be governed by G.L. c. 30A, and shall be fully described in the notice required by § 400.1 to be sent by the Bureau. In addition, the following provisions shall apply to such hearings and shall also be fully described in such notice.

402.1 All parties shall have the right to be represented by a person of their choosing, such as an expert in the area of the child's needs, or by an attorney, or by both. A list of free or low cost legal services and other related services shall be available in each Regional Branch Office of the Division.

402.2 The parents shall have the right to have the child who is the subject of the hearing present at the hearing.

- 402.3 The hearing shall not be open to the public unless the parents request it to be open to the public.
- 402.4 The parents shall have the right, pursuant to the Massachusetts Student Records Regulations, to examine all student records pertaining to the child, including the written record and clinical history of the evaluation provided by the TEAM and of any independent evaluation, and any other school records and papers upon which the proposed IEP may be based.
- 402.5 All parties shall exchange copies of all documents to be introduced at the hearing at least five days prior to the hearing and shall forward to the Bureau copies of all such documents, provided that the hearing officer may permit or request introduction of additional evidence where no prejudice would result to either party.
- 402.6 All parties have the right to present evidence, to confront, cross-examine and compel witnesses to attend the hearing.
- 402.7 All parties may obtain, at cost, an electronic verbatim transcript of the hearing upon written request to the Bureau after the close of the hearing. This transcript may only be used in a manner consistent with the appeal provisions authorized by these regulations and otherwise shall be kept confidential, except with the parent's consent.
- 402.8 The parents shall have the right to reject the decision of the hearing officer and to request placement of their child in the regular education program. If such placement is requested, the school committee shall provide the child with the regular education program, unless the school committee can make a showing in the Superior Court with jurisdiction over the residence of such child that such placement would seriously endanger the health and safety of such child or substantially disrupt the program for other children. Upon such a showing, the Court shall be authorized to place the child in an appropriate educational placement.
- 402.9 The parents shall have the right to appeal the decision of the hearing officer to the SAC when the parents desire that the child be placed in a special education program and the Bureau has recommended a regular education program, or the parents desire a special education program different from that recommended by the Bureau.

402.9 (a) Pending the decision of the SAC, the child shall be placed in a program in accordance with the provisions of § 327.0.

403.0 Decision of the Bureau of Special Education Appeals.

The hearing officer shall render a decision no later than twenty-five days after the completion of the hearing provided for by § 402.0.

403.1 Such decision shall comply with the requirements of G.L. c. 30A, s. 11, shall specify any relief the hearing officer deems appropriate and consistent with Chapter 766 and the regulations, and shall contain a specification of one of the following placements:

403.1 (a) The placement recommended by the school committee.

403.1 (b) The placement requested by the parent.

403.1 (c) Either of the above placements with modification(s).

403.1 (d) An alternative placement to that recommended by the school committee or the parent. In cases of a decision which specifies this placement, the hearing officer shall seek consultation with the appropriate RAC. The Administrator of Special Education and TEAM which completed the school evaluation shall write the IEP incorporating the decision of the hearing officer.

403.2 The hearing officer may not specify a day school (502.5) or residential school (502.6) program for a child unless the program is approved under Chapter 8 of these regulations.

404.0 Decision of the Bureau of Special Education Appeals:
Notice to parties.

404.1 The written findings of fact and decision of the hearing officer shall be sent to the parent and to their representative, if any; to the representative of the child when the child has had representation separate from that of the parent; and to the school committee and its legal representative, if any. Notice to all parties pursuant to this paragraph shall comply with the requirements of G.L. c. 30A, s. 11.

404.2 A form with a self-addressed envelop shall be included with the notice sent to the parents pursuant to § 404.1. Such form shall contain a list of the options available pursuant to § 405.0 and a statement of the information required to be on such form by § 405.2.

405.0 Parent's Options: Appeal to the State Advisory Commission.

Unless the parent accepts the decision of the Bureau, no later than fifteen days after the date of the notice sent to the parents pursuant to § 404.1, the parent shall exercise one of the following options:

405.1 To reject the decision of the Bureau and to have their child placed in the regular education program pursuant to § 402.8, by indicating such rejection and choice of the regular education program on the form provided for in § 404.2 and sending such form to the Bureau within the time specified.

405.2 To reject the decision of the Bureau, by indicating their rejection on the form provided for in § 404.2 and by sending such form to the Bureau within the time specified. Unless the child is to be placed in the regular education program pursuant to § 402.8, rejection of the decision of the Bureau shall automatically constitute an appeal to the SAC without the necessity of the parents separately requesting such an appeal. The form shall indicate these rights in a conspicuous manner. Upon receipt of the notice of appeal to the SAC, the Bureau shall within five days notify the SAC of the receipt of the form sent by the parents and forward the entire record of the proceedings before the hearing officer to the SAC.

406.0 Appeal to SAC: Process.

The SAC shall consider any appeal from the Bureau at its next monthly meeting provided that it receives such appeal at least fifteen days before its monthly meeting. In rendering its decision, the SAC shall comply with the requirements of §§ (7) and (8) of G.L. c. 30A, s. 11. Such decision shall be in writing and shall be sent, no later than five days after it is rendered, to the parents and to their representative, to the representative of the child where such child has had representation separate from that of the parents, to the Bureau, and to the school committee and its legal representative, if any. In rendering its decision, the SAC shall specify the following rights and procedures which shall be contained in a notice accompanying the decision:

406.1 That the parent can accept the decision of the SAC, or appeal to the Superior Court.

406.2 That the time period for entering an appeal to be filed in Superior Court is thirty days after receipt of the final decision of the SAC.

407.0 SAC: Decision.

In rendering a decision pursuant to § 406.0, the SAC shall do one of the following:

407.1 Order the placement recommended by the Bureau.

407.2 Order the placement recommended by the school committee where it is different from that recommended by the Bureau.

407.3 Order the placement recommended by the parent.

407.4 Order any of the above placements with modification(s).

408.0 Appeal to Superior Court.

The school committee may appeal the decision of the Bureau or the final decision of the SAC to the Superior Court for the county where the school committee is located, or to Suffolk Superior Court. The parent may appeal the decision of the SAC to the Superior Court for the county where the child or parent resides or to Suffolk Superior Court. Either such appeal shall be in accordance with the requirements of G.L. c. 30A, s. 14, and must be filed within thirty days of the final decision. The Superior Court shall be authorized to order the placement of the child in an appropriate education program.

409.0 Placement of child where a placement is agreed upon or ordered.

Notwithstanding the provisions of §§ 504.1, 504.2, 504.3 or 504.4 of these regulations, whenever a placement is agreed upon, ordered, or otherwise required pursuant to the provisions of this chapter, such placement shall be made forthwith, without any unnecessary delay.

410.0 Final decision.

A decision of the Bureau is final and binding on all parties as of its date, unless such decision is appealed to the SAC. If a decision, or part thereof, is appealed to the SAC, the decision is final as of the date of the final SAC decision. Pursuant to G.L. c. 30A, s. 14 (3), an appeal to Court shall not operate as a stay of enforcement of the final decision of the agency, provided that either party may seek a stay of enforcement from the agency or Superior Court.

411.0 Compliance/Enforcement.

Upon motion of either party or upon its own motion, the Bureau will hold a compliance hearing to determine whether there has been non-compliance with a final decision of the agency. Upon a finding of non-compliance without good cause, the Bureau will forward the matter to the Legal Office of the Department of Education for appropriate enforcement action. There is no appeal to the SAC from a non-compliance hearing.

Reg. 300.401 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

- (a) Is provided special education and related services:
 - (1) In conformance with an individualized educational program which meets the requirements under Regs. 300.340-300.349 of Subpart C;
 - (2) At no cost to the parents; and
 - (3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and
- (b) Has all of the rights of a handicapped child who is served by a public agency.

(20 U.S.C. 1413(a)(4)(B))

Reg. 300.402 Implementation by State educational agency.

In implementing Reg. 300.401, the State educational agency shall:

- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- (b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and
- (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.

(20 U.S.C. 1413(a)(4)(B))

Reg. 300.403 Placement of children by parents.

- (a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Regs. 300.450-300.460.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under Regs. 300.500-300.514 of Subpart E.

(20 U.S.C. 1412(2)(B); 1415)

**HANDICAPPED CHILDREN IN PRIVATE SCHOOLS
NOT PLACED OR REFERRED BY PUBLIC
AGENCIES**

Reg. 300.450 Definition of "private school handicapped children."

As used in Regs. 300.451-300.452, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under Regs. 300.400-300.403.

(20 U.S.C. 1413(a)(4)(A))

[Amended in 45 Fed. Reg. 22531 (April 3, 1980).]

Reg. 300.451 State educational agency responsibility.

The State educational agency shall insure that—

- (a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

- (b) The other requirements in 34 CFR 76.651-76.663 of EDGAR are met.

(20 U.S.C. 1413(a)(4)(A))

[Amended in 45 Fed. Reg. 22531 (April 3, 1980).]

Reg. 300.452 Local educational agency responsibility.

- (a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(20 U.S.C. 1413(a)(4)(A); 1414(a)(6))

[Amended in 45 Fed. Reg. 22531 (April 3, 1980).]

Subpart E—Procedural Safeguards

**DUE PROCESS PROCEDURES FOR PARENTS
AND CHILDREN**

**Reg. 300.500 Definitions of "consent," "evaluation,"
and "personally identifiable."**

As used in this part: "Consent" means that: (a) The parent has been fully informed of all information relevant to

the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used in accordance with Regs. 300.530-300.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415, 1417(c))

Reg. 300.501 General responsibility of public agencies.

Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of Regs. 300.500-300.514.

(20 U.S.C. 1415(a))

Reg. 300.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in Regs. 300.562-300.569 an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(A))

Reg. 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with Reg. 300.301 of Subpart C.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under Reg. 300.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A))

Reg. 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under Reg. 300.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) *Consent.* (1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and
(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) *Procedures where parent refuses consent.* (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2)(i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in Regs. 300.506-300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under Regs. 300.510-300.513.

(20 U.S.C. 1415(b)(1)(C), (D))

Comment. 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

Reg. 300.505 Content of notice.

(a) The notice under Reg. 300.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraph (c) (1) and (2) of this section have been met.

(20 U.S.C. 1415(b)(1)(D))

Reg. 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in Reg. 300.504(a)(1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1415(b)(2))

Comment. Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

Reg. 300.507 Impartial hearing officer.

(a) A hearing may not be conducted:

- (1) By a person who is an employee of a public agency which is involved in the education or care of the child, or
- (2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(20 U.S.C. 1415(b)(2))

Reg. 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.
- (4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

- (1) Have the child who is the subject of the hearing present; and
- (2) Open the hearing to the public.

(20 U.S.C. 1415(d))

Reg. 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the decision under Reg. 300.510 or Reg. 300.511.

Reg. 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

- (1) Examine the entire hearing record;
- (2) Insure that the procedures at the hearing were consistent with the requirements of due process;
- (3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Reg. 300.508 apply;
- (4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- (5) Make an independent decision on completion of the review; and
- (6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final unless a party brings a civil action under Reg. 300.512.

(20 U.S.C. 1415(c), (d); H.Rep. No. 94-664, at p. 49 (1975))

Comment. 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in Reg. 300.508, relating to hearings, also apply.

Reg. 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under Reg. 300.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under Reg. 300.510 has the right to bring a civil action under Section 615(e)(2) of the Act.

(20 U.S.C. 1415)

Reg. 300.512 Timeliness and convenience of hearings and reviews.

- (a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing:
- (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.
- (b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:
- (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.
- (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.
- (d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(20 U.S.C. 1415)

Reg. 300.513 Child's status during proceedings.

- (a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1415(e)(3))

Comment. Reg. 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

Reg. 300.514 Surrogate parents.

- (a) *General.* Each public agency shall insure that the rights of a child are protected when:
- (1) No parent (as defined in Reg. 300.10) can be identified;
 - (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
 - (3) The child is a ward of the State under the laws of that State.
- (b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a

surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

- (i) Has no interest that conflicts with the interest of the child he or she represents; and
- (ii) Has knowledge and skills, that insure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to:

- (1) The identification, evaluation, and educational placement of the child, and
- (2) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(B))

PROTECTION IN EVALUATION PROCEDURES

Reg. 300.530 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.530-300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(20 U.S.C. 1412(5)(C))

Reg. 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special educational program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Reg. 300.532.

(20 U.S.C. 1412(5)(C))

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